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Siva Kumar a/l Jeyapalan & Anor v Firwas Sdn Bhd

B HIGH COURT (KUALA LUMPUR) — WRIT SUMMONS NO WA-22NCVC-677–10 OF 2018
AZIMAH OMAR J
22 JANUARY 2024

C *Tort — Conspiracy — Conspiracy to defraud — Real estate agent, bogus lawyer and businessman attempted to defraud company of its land — Whether elements of tort had been proven — Whether company had also proven that real estate agent and bogus lawyer had breached their fiduciary duties to company — Whether manner in which fraud was committed warranted award of aggravated and*
D *exemplary damages against the fraudsters*

A family-owned company, ('Firwas'), run by the son ('Jasim') of one of its founder-members, owned a piece of land in Johor. Firwas was desirous of selling the land for RM60m. Jasim's wife ('Irene') knew a real estate agent
E ('Thevandran') who agreed to find a buyer for the land. Jasim (a director of Firwas) and Irene worked closely with Jasim's mother, Mavis, in taking care of Firwas's interests. Thevandran informed Jasim and Irene that he had found a buyer (Siva Kumar Jeyapalan)('Siva') for the land and that Siva had paid him a booking fee of RM1.2m ('the earnest deposit'). At all times, neither Jasim,
F Irene nor Mavis dealt directly with Siva and all communications concerning the land were done through Thevandran who said that Siva proposed to settle the full purchase price in three tranches of RM20m each. However, Thevandran subsequently informed Jasim and Irene that Siva would only pay the first two tranches, amounting to RM40m, in cash whilst the final RM20m
G would be in the form of two properties owned by Siva which would be transferred to Firwas when the second tranche was paid. Thevandran thereafter introduced Firwas to a woman ('Usha') who claimed that she was a lawyer and was prepared to act for Firwas in drawing up the sale and purchase agreement ('SPA') for the sale. Firwas, through Jasim, Irene and Mavis, were unhappy
H with the several draft SPAs that Usha prepared because they wrongly reflected the sale price as RM40m and did not provide for the manner in which the actual purchase price of RM60m would be settled. Firwas' insistence that the third tranche of RM20m must be paid in cash and not by way of transfer of properties owned by Siva caused the negotiations between the parties to come
I to an end. Emails were exchanged between Jasim, Irene, Thevandran and Usha confirming that the plan to sell the land to Siva had been aborted. Firwas then entered into an agreement to sell the land to another party ('Eastern Titan') for RM58m. Despite knowing of the sale to Eastern Titan, Usha informed Siva's lawyer that Firwas had accepted the terms in the final draft of her SPA and sent

the document over to the lawyer for Siva's signature. Siva duly signed the SPA and allegedly sent RM4.8m to Usha to show that he had paid (together with the earlier earnest deposit) 10% of the purchase price for the land. Usha then informed Jasim of what had transpired but Jasim pointed out that the plan to sell the land to Siva had been aborted and that Firwas had never at any time accepted any of the SPAs that Usha had drafted. Siva proceeded to lodge a private caveat on the land and filed the instant suit against Firwas for an order that the SPA he had signed be specifically performed by Firwas. In response, Firwas counterclaimed against Siva, Thevandran and a partner in Usha's 'legal firm' ('Shoba') for an order directing Siva to remove the private caveat and to pay damages for its unlawful lodgement together with damages against the trio for breach of fiduciary duty, fraud and conspiracy to defraud Firwas. Thevandran, in turn, counterclaimed for a declaration that the RM1.2m earnest deposit he had received from Siva now belonged to him in settlement of his fees for work done.

Held, dismissing both Siva's claim and Thevandran's counterclaim with costs on an indemnity basis in favour of Firwas; allowing Firwas' counterclaim with costs on an indemnity basis against Siva, Ammsa Property Sdn Bhd, Thevandran and Shoba; ordering Siva to remove his private caveat on the land within 14 days; ordering Siva, Thevandran and Shoba to each pay Firwas RM100,000 as aggravated and exemplary damages apart from general damages of 8% per annum on RM52.2m commencing from 22 September 2020 until 14 days after Siva had removed the private caveat on the land; ordering Thevandran to pay the RM1.2m earnest deposit in his possession to Firwas towards partial settlement of Siva's judgment debt herein to Firwas:

(1) Based on the evidence, there was never any binding or concluded agreement entered into by Firwas to sell the land to Siva. The SPA relied upon by Siva to obtain an order for specific performance thereof was illegal, fraudulent, ab initio void and unenforceable. Firwas acted well within its rights when it sold the land to Eastern Titan (see paras 95 & 142).

(2) The court found that Thevandran and Usha (as partner in Usha's fraudulent law firm) had breached their fiduciary duties to Firwas and that Thevandran, Siva and Shoba (as partner in Usha's fraudulent firm) had perpetrated their own respective fraud and colluded in a collective conspiracy to defraud Firwas (see para 142).

(3) Thevandran had abused his relationship with Irene and Jasim by, inter alia, introducing Firwas to Usha knowing that she was not a qualified lawyer. Despite knowing that negotiations for the sale of the land to Siva had come to an end and that the land had been sold to Eastern Titan, Thevandran caused Firwas to suffer losses by falsely committing it to the sham SPA by instructing Usha to 'accept' the sham SPA on behalf of

Firwas even though there were no such instructions from Firwas. Thevandaran also lied during the trial by insisting that the purchase price for the land was RM40m although his own documents stated that the price was RM60m (see para 99).

(4) Usha had abused the trust placed by Firwas on her as a fiduciary. She had falsely passed herself off as a qualified lawyer. Even in that fraudulent role, she had never carried out Firwas' instructions to amend her draft SPAs to reflect the true purchase price and the manner of its settlement. Without any instructions from Firwas and despite knowing that negotiations to sell the land to Siva had been aborted and that the land had been sold to Eastern Titan, Usha fraudulently informed Siva's lawyer that Firwas had approved the sham SPA. Usha also admitted during the trial that she committed forgery and perjury by falsifying her firm's bank account statement to show that Siva had paid to her firm a further deposit of RM4.8m under the sham SPA (see paras 63, 65 & 100–102).

(5) Siva had colluded with Thevandran and Usha to sign the sham SPA despite knowing that negotiations to sell the land to him had ended and that the land had been sold to Eastern Titan. He had caused Firwas to suffer losses by falsely committing it to the sham SPA and by wrongfully entering a private caveat upon the land. He also lied to this court by insisting that the purchase price was RM40m although his own documents and affidavit stated that the agreed price was RM60m (see paras 103–104).

(6) Siva's wrongful entry of a private caveat on the land had caused Eastern Titan to delay payment of the balance purchase price of RM52.2m for the land to Firwas for more than three years. Firwas' deprivation of the opportunity to earn interest on the said sum for more than three years was a foreseeable loss that Siva, Thevandran and Shoba had to make good because it was caused by their conspiracy. If the sale of the land to Eastern Titan had gone undisturbed by the fraudulent conspiracy, Eastern Titan would have had to contractually settle the entire purchase price by 22 September 2020. Accordingly, it was this Court's decision that Siva, Thevandran and Shoba were jointly and severally liable to pay Firwas damages assessed on the basis of 8%pa interest on the RM52.2m from 22 September 2020 until one month after Siva's caveat had been removed (see paras 109, 111–112, 115 & 131).

(7) Notwithstanding that Shoba's involvement in the fraud perpetrated upon Firwas was minimal, by virtue of the fact that she was a partner in Usha's fraudulent firm, which owed fiduciary duties to Firwas, made Shoba liable to share the same liability as the firm in the fraud, conspiracy and breach of fiduciary duty that was perpetrated. Despite her minimal involvement, Shoba had full knowledge of and had

authorised Usha's fraudulent works under the name and banner of the fraudulent firm (see paras 122–123 & 129). A

(8) Considering the nature and character of the fraud, conspiracy and breach of fiduciary duty that was perpetrated upon Firwas and the injury that resulted, it was appropriate for the court to order Thevandran, Siva and Shoba to each pay RM100,000 in aggravated and exemplary damages to Firwas (see paras 135 & 142). B

[Bahasa Malaysia summary

Sebuah syarikat milik keluarga, ('Firwas'), yang dikendalikan oleh anak lelaki ('Jasim') salah seorang pengasasnya, memiliki sekeping tanah di Johor. Firwas berhasrat menjual tanah tersebut pada harga RM60 juta. Isteri Jasim ('Irene') mengenali seorang ejen hartanah ('Thevandran') yang bersetuju untuk mencari pembeli tanah tersebut. Jasim (pengarah Firwas) dan Irene bekerja secara rapat dengan ibu Jasim, Mavis, dalam menjaga kepentingan Firwas. Thevandran memaklumkan kepada Jasim dan Irene bahawa dia telah menemui pembeli (Siva Kumar Jeyapalan) ('Siva') untuk tanah tersebut dan bahawa Siva telah membayarnya fi tempahan sebanyak RM1.2 juta ('deposit cangkeram'). Pada setiap masa, Jasim, Irene mahupun Mavis tidak berurusan secara langsung dengan Siva dan semua komunikasi berhubung tanah tersebut dibuat melalui Thevandran yang mengatakan bahawa Siva bercadang untuk menyelesaikan harga belian penuh dalam tiga peringkat RM20 juta setiap peringkat. Bagaimanapun, Thevandran kemudiannya memaklumkan kepada Jasim dan Irene bahawa Siva hanya akan membayar dua bahagian pertama, berjumlah RM40 juta, secara tunai manakala RM20 juta terakhir adalah dalam bentuk dua hartanah milik Siva yang akan dipindahmilik kepada Firwas apabila peringkat kedua dibayar. Thevandran selepas itu memperkenalkan Firwas kepada seorang wanita ('Usha') yang mendakwa dia seorang peguam dan bersedia untuk bertindak bagi Firwas dalam merangka perjanjian jual beli ('PJB') untuk penjualan itu. Firwas, melalui Jasim, Irene dan Mavis, tidak berpuas hati dengan beberapa draf PJB yang Usha sediakan kerana ia salah menggambarkan harga jualan RM40 juta dan tidak memperuntukkan cara harga pembelian sebenar RM60 juta yang akan diselesaikan. Desakan Firwas bahawa peringkat ketiga RM20 juta mesti dibayar secara tunai dan bukan dengan cara pindahmilik harta milik Siva menyebabkan rundingan antara pihak berakhir. E-mel telah bertukar antara Jasim, Irene, Thevandran dan Usha mengesahkan bahawa rancangan untuk menjual tanah itu kepada Siva telah dibatalkan. Firwas kemudian memeterai perjanjian untuk menjual tanah itu kepada pihak lain ('Eastern Titan') pada harga RM58 juta. Walaupun mengetahui tentang penjualan kepada Eastern Titan, Usha memaklumkan kepada peguam Siva bahawa Firwas telah menerima syarat dalam draf akhir SPAnya dan menghantar dokumen itu kepada peguam untuk tandatangan Siva. Siva menandatangani SPA dengan sewajarnya dan mendakwa menghantar RM4.8 juta kepada Usha untuk menunjukkan bahawa dia telah

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membayar (bersama dengan deposit cangkeram terdahulu) 10% daripada harga belian tanah itu. Usha kemudian memaklumkan kepada Jasim tentang apa yang berlaku tetapi Jasim menegaskan bahawa rancangan untuk menjual tanah itu kepada Siva telah dibatalkan dan Firwas tidak pernah pada bila-bila masa menerima mana-mana PJB yang telah disediakan oleh Usha. Siva terus memasukkan kaveat persendirian ke atas tanah itu dan memfailkan saman semasa terhadap Firwas untuk perintah supaya PJB yang ditandatanganinya dilaksanakan secara khusus oleh Firwas. Sebagai balasan, Firwas membuat tuntutan balas terhadap Siva, Thevandran dan rakan kongsi dalam 'firma guaman' Usha ('Shoba') untuk perintah mengarahkan Siva untuk membatalkan kaveat persendirian dan membayar ganti rugi untuk kemasukan yang menyalahi undang-undang bersama-sama dengan ganti rugi terhadap ketiga-tiga mereka kerana melanggar kewajipan fidusiari, penipuan dan konspirasi untuk menipu Firwas. Thevandran, sebaliknya, membuat tuntutan balas bagi deklarasi bahawa deposit cangkeram RM1.2 juta yang diterima daripada Siva kini menjadi miliknya sebagai menjelaskan fi kerja yang dilakukan.

Diputuskan, menolak kedua-dua tuntutan Siva dan tuntutan balas Thevandran dengan kos atas dasar indemniti memihak kepada Firwas; membenarkan tuntutan balas Firwas dengan kos atas dasar indemniti terhadap Siva, Ammsa Property Sdn Bhd, Thevandran dan Shoba; mengarahkan Siva membatalkan kaveat persendiriannya di atas tanah itu dalam tempoh 14 hari; memerintahkan Siva, Thevandran dan Shoba masing-masing membayar Firwas RM100,000 sebagai ganti rugi teruk dan teladan selain daripada ganti rugi am sebanyak 8% setahun pada RM52.2 juta bermula dari 22 September 2020 sehingga 14 hari selepas Siva membatalkan kaveat persendirian ke atas tanah itu; mengarahkan Thevandran membayar deposit cangkeram RM1.2 juta dalam milikannya kepada Firwas bagi menyelesaikan sebahagian hutang penghakiman Siva di sini kepada Firwas:

(1) Berdasarkan keterangan, tidak pernah ada perjanjian mengikat atau muktamad yang dibuat oleh Firwas untuk menjual tanah itu kepada Siva. PJB yang dipergantungkan oleh Siva untuk mendapatkan perintah bagi pelaksanaan khusus adalah menyalahi undang-undang, penipuan, tidak sah dan tidak boleh dikuatkuasakan. Firwas bertindak mengikut haknya apabila ia menjual tanah itu kepada Eastern Titan (lihat perenggan 95 & 142).

(2) Mahkamah mendapati bahawa Thevandran dan Usha (sebagai rakan kongsi dalam firma guaman penipuan Usha) telah melanggar kewajipan fidusiari mereka kepada Firwas dan Thevandran, Siva dan Shoba (sebagai rakan kongsi dalam firma penipuan Usha) telah melakukan penipuan masing-masing dan bersekongkol dalam konspirasi kolektif untuk menipu Firwas (lihat perenggan 142).

(3) Thevandran telah menyalahgunakan hubungannya dengan Irene dan Jasim dengan, antara lain, memperkenalkan Firwas kepada Usha kerana mengetahui bahawa dia bukan seorang peguam yang berkelayakan. Walaupun mengetahui bahawa rundingan untuk penjualan tanah kepada Siva telah berakhir dan tanah itu telah dijual kepada Eastern Titan, Thevandran menyebabkan Firwas mengalami kerugian dengan melakukan penipuan kepada PJB palsu dengan mengarahkan Usha untuk 'menerima' PJB palsu bagi pihak Firwas walaupun tiada arahan sedemikian dari Firwas. Thevandaran juga berbohong semasa perbicaraan dengan menegaskan bahawa harga belian tanah itu ialah RM40 juta walaupun dokumennya sendiri menyatakan bahawa harganya ialah RM60 juta (lihat perenggan 99).

(4) Usha telah menyalahgunakan amanah yang diberikan oleh Firwas kepadanya sebagai seorang fidusiari. Dia telah menyebabkan kelirupaan sebagai seorang peguam yang berkelayakan. Walaupun dalam peranan penipuan itu, dia tidak pernah melaksanakan arahan Firwas untuk meminda draf PJBnya untuk menggambarkan harga belian sebenar dan cara pembayarannya. Tanpa sebarang arahan daripada Firwas dan walaupun mengetahui bahawa rundingan untuk menjual tanah itu kepada Siva telah dibatalkan dan tanah itu telah dijual kepada Eastern Titan, Usha secara curang memberitahu peguam Siva bahawa Firwas telah meluluskan PJB palsu itu. Usha juga mengakui semasa perbicaraan bahawa dia melakukan pemalsuan dan perjuri dengan memalsukan penyata akaun bank firmanya untuk menunjukkan bahawa Siva telah membayar kepada firmanya deposit tambahan sebanyak RM4.8 juta di bawah PJB palsu (lihat perenggan 63, 65 & 100–102).

(5) Siva telah berpakat dengan Thevandran dan Usha untuk menandatangani PJB palsu walaupun mengetahui bahawa rundingan untuk menjual tanah kepadanya telah berakhir dan tanah itu telah dijual kepada Eastern Titan. Dia telah menyebabkan Firwas mengalami kerugian dengan melakukan penipuan kepada PJB palsu dan dengan salah memasukkan kaveat persendirian ke atas tanah itu. Dia juga berbohong kepada mahkamah ini dengan menegaskan bahawa harga belian adalah RM40 juta walaupun dokumen dan afidavitnya sendiri menyatakan bahawa harga yang dipersetujui ialah RM60 juta (lihat perenggan 103–104).

(6) Siva memasukkan kaveat persendirian yang salah ke atas tanah itu telah menyebabkan Eastern Titan menangguhkan pembayaran baki harga belian RM52.2 juta untuk tanah itu kepada Firwas selama lebih tiga tahun. Kehilangan peluang Firwas untuk memperoleh faedah ke atas jumlah tersebut selama lebih daripada tiga tahun adalah kerugian yang boleh diramalkan yang terpaksa dibayar oleh Siva, Thevandran dan Shoba kerana ia disebabkan oleh konspirasi mereka. Sekiranya

penjualan tanah kepada Eastern Titan tidak diganggu oleh konspirasi penipuan, Eastern Titan secara kontrak menyelesaikan keseluruhan harga belian pada 22 September 2020. Sehubungan itu, ia adalah keputusan mahkamah ini bahawa Siva, Thevandran dan Shoba secara bersama dan bertanggungjawab untuk membayar ganti rugi Firwas yang dinilai berdasarkan faedah 8% setahun pada RM52.2 juta mulai 22 September 2020 sehingga sebulan selepas kaveat Siva telah dibatalkan (lihat perenggan 109, 111–112, 115 & 131).

(7) Walaupun penglibatan Shoba dalam penipuan yang dilakukan ke atas Firwas adalah minimum, berdasarkan fakta bahawa dia adalah rakan kongsi dalam firma penipuan Usha, yang mempunyai kewajipan fidusiari kepada Firwas, menjadikan Shoba bertanggungjawab untuk berkongsi liabiliti yang sama seperti firma itu dalam penipuan, konspirasi dan pelanggaran kewajipan fidusiari yang dilakukan. Walaupun penglibatannya yang minimum, Shoba mempunyai pengetahuan penuh dan telah membenarkan kerja-kerja penipuan Usha di bawah nama dan amalan firma penipuan itu (lihat perenggan 122–123 & 129).

(8) Memandangkan sifat dan perwatakan penipuan, konspirasi dan pelanggaran kewajipan fidusiari yang dilakukan ke atas Firwas dan kerugian yang diakibatkan, ia adalah wajar bagi mahkamah untuk memerintahkan Thevandran, Siva dan Shoba masing-masing membayar RM100,000 sebagai ganti rugi teruk dan teladan kepada Firwas (lihat perenggan 135 & 142).]

Cases referred to

Bristol and West Building Society v Mothew [1998] Ch 1, CA (refd)
Fiona Trust & Holding Corporation and 75 ors v Yuri Privalov and 28 ors [2011] EWHC 664 (Comm), QBD (folld)
Guthrie Property Development Holding Bhd v Baharudin bin Hj Ali & Ors [2011] 3 MLJ 416, HC (refd)
Ho Yau Hong & Ors v How Yaw Ming and another appeal [2023] MLJU 933, CA (folld)
Khoon Chye Hin v PP [1961] 1 MLJ 105b, CA (refd)
Lai Soon Onn v Chew Fei Meng and other appeals [2019] 2 MLJ 96, CA (refd)
Lee Ing Chin @ Lee Teck Seng & Ors v Gan Yook Chin & Anor [2003] 2 MLJ 97, CA (refd)
Lembaga Kemajuan Tanah Persekutuan (FELDA) & Anor v Awang Soh bin Mamat & Ors [2009] 4 MLJ 610; [2010] 1 AMR 285; [2009] 5 CLJ 1, CA (refd)
Letchumanan Chettiar Alagappan @ L Allagappan (as executor to SL Alameloo Achi alias Sona Lena Alamelo Acho, deceased) & Anor v Secure Plantation Sdn Bhd [2017] 4 MLJ 697, FC (refd)
Mah Siew Seng & Anor (both as administrators of the estate of Mah Khin Kee (the

deceased)) v Seema Development Sdn Bhd [2014] 7 MLJ 372, HC (refd)
MD Biomedical Engineering (M) Sdn Bhd v Goh Yong Khai [2021] 5 MLJ 408, CA (refd)
Merong Mahawangsa Sdn Bhd & Anor v Dato' Shazryl Eskay bin Abdullah [2015] 5 MLJ 619, FC (folld)
Ooi Meng Khin v Amanah Scotts Properties (KL) Sdn Bhd [2014] 6 MLJ 488, CA (refd)
Radiant Splendour Sdn Bhd & Ors v Dato' Seri Mohd Najib bin Tun Abdul Razak & Ors [2020] MLJU 961, HC (refd)
Sambaga Valli a/p KR Ponnusamy v Datuk Bandar Kuala Lumpur & Ors and another appeal [2018] 1 MLJ 784, CA (folld)
Sri Kelangkota-Rakan Engineering JV Sdn Bhd & Ors v Arab-Malaysian Prima Realty Sdn Bhd & Ors [2001] 1 MLJ 324, CA (folld)
Solid Investments Ltd v Alcatel-Lucent (M) Sdn Bhd (previously known as Alcatel Network Systems (M) Sdn Bhd) [2014] 3 MLJ 785, FC (refd)
Takako Sakao (f) v Ng Pek Yuen (f) & Anor (No 2) [2010] 2 MLJ 181, FC (refd)
Ting Sieh Chung v Hock Peng Realty Sdn Bhd [2013] 2 MLJ 90, CA (refd)
Yap Sau Choon @ Yap Bee Yong & Anor v Cheong Hong Mun & Ors [2016] MLJU 1203, HC (refd)

Legislation referred to

Contracts Act 1950 s 24(c)
National Land Code s 329
Partnership Act 1961 ss 7, 8, 12

Selva Kumar (Rose Hussain) for the plaintiff in the main suit.
David Morais (with Pavitra Pillai, Sarah Jailany and Ellia Fatanah) (Shaikh David & Co) for the defendant in the main suit.
David Morais (with Pavitra Pillai, Sarah Jailany and Ellia Fatanah) (Shaikh David & Co) for the plaintiff in the counterclaim.
Selva Kumar (Rose Hussain) for the first and second defendants in the counterclaim.
Sivabalan (with Goh Wan Ping) (Mastura Partnership) for the third defendant in the counterclaim.
Dinesh Praveen Nair (Dinesh Praveen Nair) for the fourth defendant in the counterclaim.

Azimah Omar J:

A. FOREWORD

[1] The case before this court was a patently and obviously a fraudulent and sham claim by fraudulent personas who by their concerted deceit and outright lies maliciously attempted to force the defendant-vendor to conform and abide by a fraudulent draft sale and purchase agreement (which at all times was never

signed and in fact had been clearly rejected by the defendant-vendor). The fraud was concocted by the plaintiffs themselves together with another fraudulent property agent and a fraudulent interloper within the legal fraternity who was unlawfully holding herself out as a qualified person (and lawyer) despite having proven to have forged her qualifications before the Malaysian Bar Council. The sheer magnitude of falsity emanating from this sham claim was overtly astounding to the grave extent that this court must remark its disdain and chagrin to the callous and brazen deceit that the plaintiffs and its cohorts have tried to delude this court to believe.

[2] The core facts of the sham claim were simple. The defendant-company was the owner and vendor of a large piece of land. The defendant-company was desirous to sell the piece of land. The plaintiffs were the failed prospect who was unable to conclude an agreement with the defendant to purchase the piece of land. Prior to negotiations, the plaintiffs have allegedly demonstrated their commitment by paying an earnest deposit to the fraudulent property agent to the amount of RM1.2m. It remains undisputed that this earnest deposit had never been remitted nor paid to the defendant-vendor and had always remained in the possession of the fraudulent property agent.

[3] A temporary receipt for the earnest deposit was signed *although clearly subject to continued negotiations for terms and final agreement*. It was clearly mentioned and discussed that the purchase price for the property was *RM60m*. The temporary receipt stipulated that the purchase price was for RM40m (to be paid in two tranches) while a contemporaneous signed letter of undertaking by the fraudulent property agent had admitted that the final third tranche RM20m shall be paid simultaneously with the second tranche of the RM40m under the temporary receipt.

[4] The reasons the negotiations were aborted were, inter alia, plainly that:

(a) the defendant rejected all the draft SPAs drafted by the fraudulent lawyer as the draft SPAs did not clearly reflect the RM60m purchase price that was preliminarily negotiated upon;

(b) the defendant rejected all the draft SPAs considering the conspicuous and dubious manner the fraudulent lawyer and fraudulent property agent was insistent that the draft SPAs to only reflect the price of RM40m;

(c) the defendant rejected all the draft SPAs in fear of being held accountable to collude in a tax evasion scheme for understating the true purchase price of RM60m within the draft SPA itself; and

(d) the defendant rejected all the draft SPAs as it was never agreed that the final third tranche of the RM60m be satisfied via transfer of some

properties of equal value. Instead the defendant had at all times insisted that all the RM60m shall be paid by liquid means.

[5] The breakdown and failure of negotiations were plain and obvious. Apart from the clear failure of negotiations, the rejection and abortion of negotiations was clearly recorded and communicated to the fraudulent property agent and the fraudulent lawyer. In fact, the fraudulent lawyer and the fraudulent property agent had by their own written words acknowledged and admitted that either the negotiations had not reached any conclusion or that the negotiation was outright aborted and rejected. There was a barrage of documentary evidence to prove all of these facts both from the defendant and the plaintiffs themselves.

[6] Due to the failed negotiations with the plaintiffs, the defendant was well within its rights to deal with the land and subsequently sold the land to the successful purchaser, one Dato Lee Siang Huat ('Dato Lee') of Eastern Titan Sdn Bhd ('Eastern Titan') for a cash price of RM58m.

[7] Despite being fully aware and personally informed of the total failure and abortion of negotiations with the plaintiffs, the fraudulent property agent and the fraudulent lawyer (and to an extent even the plaintiffs) were altogether willing stoop so low so as to hatch a fraudulent scheme in order to secure the would-have-been interest (either in legal fees, agency fees, and land ownership) that these three fraudulent personas would have gained if the negotiations with the plaintiffs were a success. And these three fraudsters were willing to stoop so low despite having full knowledge that the negotiations have failed and the defendant had never at any point in time signed or even agreed on any terms with the plaintiffs.

[8] And the insidious modus operandi of their conspiracy to defraud is to fabricate a façade and false narrative as though the plaintiffs were well within their legitimate expectation to rely on the ostensible authority of the fraudulent lawyer and fraudulent property agent (as alleged 'agents' of the defendant) to deem that the defendant-company had 'agreed' to one of the draft SPAs that were prepared by the fraudulent lawyer. Unbeknownst to and without the defendant-company's knowledge, the fraudulent lawyer and the fraudulent property agent colluded and had 'accepted' one of the sham draft SPAs which led to the plaintiffs to sign one of the sham SPAs prepared by the fraudulent lawyer. Supposedly, the plaintiffs were insisting that the fraudulent lawyer's and the fraudulent property agent's acceptance would bind the defendant-vendor as principal.

[9] In furtherance of their detestable scheme, the fraudulent lawyer and the fraudulent property agent allegedly had 'accepted' a further deposit of

RM4.8m (paid to the fraudulent lawyer's firm) from the fraudulent plaintiffs. This was yet another façade employed in the machinations to fraudulently force the defendant-vendor to commit and conform to the sham SPA that it had never agreed to.

[10] The inexplicable contradictions were glaring and were significantly reflective of the fraudulent lawyer's fraudulent conduct and intent. Despite having confirmed via written email to the defendant that the negotiations had been aborted, the same fraudulent lawyer subsequently emailed the defendant-vendor for 'further instruction' on the sham SPA that had been signed by the fraudulent plaintiffs.

[11] To further cement the fraudsters' sham claim, the fraudsters had the audacity to file the *main suit (plaintiffs: (i) Sivakumar a/l Jeyapalan; and (ii) AMMSA Property Sdn Bhd v defendant: Firwas Sdn Bhd)* before this court seeking for damages and specific performance to force the defendant to perform the sham SPA it had never signed and agreed to. To add further disgrace to their sham claim, the fraudulent plaintiffs, the fraudulent lawyer, and the fraudulent property agent even attempted to delude this court into believing that the sale price negotiated was a mere RM40m while expecting this court to ignore barrage upon barrage of evidence in which even the fraudsters admitted to the sale price negotiated had always been RM60m. The fraudulent plaintiffs even lodged caveats upon the land to protect their fraudulent 'interest' in the land (in which there was certainly none).

[12] While defending against the plaintiffs' sham claim, the defendant-vendor had also filed their own counterclaim within the main suit (defendant-vendor's counterclaim: (plaintiff: Firwas Sdn Bhd v defendants: (i) Sivakumar a/l Jeyapalan, (ii) AMMSA Property Sdn Bhd, (iii) Thevandran a/l K Ragavan and (iv) Shoba a/p Govindasamy_ for consequential orders to remove the fraudulent plaintiffs' wrongful caveat as well as damages for the removal of the caveat and damages against the fraudulent property agent and fraudulent lawyer's firm.

[13] As though the fraudulent scheme could not have been more sinister, the fraudulent property agent even hatched his own sham counterclaim against the defendant-vendor and the defendant's Director to enforce the sham SPA and to keep the earnest deposit of RM1.2m he received from the fraudulent plaintiffs as his 'fees' as the defendant's property agent. The fraudulent property agent counterclaim against the defendant-vendor: (plaintiff: Thevandran a/l K Ragavan v defendants: (i) Firwas Sdn Bhd (ii) Jasim Sura Puthucheary).

[14] This court had sat through lengthy days of trial having to hear many dubious, inconsistent, and downright nonsensical testimonies from many

dishonest and deflective witnesses all of which were from the plaintiffs' side of the case. This court shall certainly put the meat on the bones of this foreword to clearly unravel the clear fraud, conspiracy, and breach of fiduciary duties that the plaintiffs had dragged before this court's doorstep.

[15] On the other hand, this court must laud and express this court's utmost appreciation for the defendant-vendor's solicitors for preparing an immaculate written submission which by and large had encapsulated the core essence of the case. Although the written submission was lengthy (spanning over 146 pages), the manner in which the Submission was arranged and presented to this court had proffered this court with ease of reading, as well as concise and precise recollection of the critical events that had transpired during trial before this court (and all the material facts which led to the filing of the main suit and the two counterclaims).

[16] It is well within this court's comprehension that Firwas (defendant-vendor) had not literally pleaded a case for fraud or conspiracy and instead pleaded a case for wrongful breach of fiduciary duty and wrongful entry of caveat. Nonetheless, it was impossible for this court to ignore the factum that the pleaded facts clearly show that the manners in which the breach of fiduciary duty were perpetrated was obviously fraudulent. Thus, it would not be entirely correct to say that Firwas had not at all pleaded a case for fraud or conspiracy. As far as this court is concerned, the facts and particulars pleaded within Firwas's pleading (in its statement of defence as well as counterclaim) sufficiently pleaded the manners and methods the fraud and conspiracy were perpetrated. There is nothing inherently wrong to plead a case that a breach of fiduciary duty was perpetrated by way of fraud or conspiracy, as in essence, the abuse of a fiduciary position can occur vide fraudulent conducts and conspiracy against the victim who had entrusted the fraudster to become his fiduciary.

[17] Although the law requires that the allegation of fraud needs to be specifically pleaded, the word 'fraud' in the generic sense NEED NOT BE PLEADED. The Federal Court in its landmark decision in *Letchumanan Chettiar Alagappan @ L Allagappan (as executor to SL Alameloo Achi alias Sona Lena Alamelo Acho, deceased) & Anor v Secure Plantation Sdn Bhd* [2017] 4 MLJ 697 had clearly held that the question whether the word 'fraud' was explicitly pleaded was an insignificant 'semantic detail'. The proper question to ask was instead whether or the not the facts which make up the fraudulent conduct were pleaded. In which case, the entire facts of the fraudulent unauthorised 'acceptance' of the sham SPA (despite clear failure and abortion of negotiations) by the fraudulent lawyer, fraudulent property agent, and the plaintiffs were all fully pleaded within the defendants' defence and counterclaim:

A [26] Order 18 r 8(1) of the Rules of Court 2012 read together with r 12(1)(a) requires a specific plea of fraud as well as the particulars of fraud. *Yet, it is not always necessary to plead the word 'fraud'*. In *Davy v Garrett* (1878) 7 Ch D 473 at p 489), Thesiger LJ said:

> B It may not be necessary in all cases to use the word 'fraud' — indeed in one of the ordinary cases it is not necessary. An allegation that the defendant made to the plaintiff representations were untrue, and known to the defendant to be untrue, is sufficient. The word 'fraud' is not used, but two expressions are used pointing at the state of mind of the defendant — that he intended the representations to be acted upon, and that he knew them to be untrue.

C [27] Lord Millet LJ, in *Armitage v Nurse and others* [1998] Ch 241 clearly agreed with Thesiger LJ:

> The general principle is well known. Fraud must be distinctly alleged and as distinctly proved: *Davy v Garrett* (1878) 7 Ch D 473 at p 489, per Thesiger LJ. D *It is not necessary to use the word 'fraud' or 'dishonesty' if the facts which make the conduct complained of fraudulent are pleaded.*
>
> ...
>
> Given its wide acceptance, it is therefore surprising that neither *Davy v Garrett* nor E *Armitage v Nurse* and others was ever applied in Malaysia to resolve whether it is necessary to plead the word 'fraud', until *Ranjeet Singh Sidhu v Zavarco PLC* [2015] MLJU 638, where Wong Kian Kheong JC first cited *Armitage v Nurse* and others and said:
>
> F I do, however, draw attention to two separate aspects of the requirements relating to the pleading of fraud. The first is that there must be an express allegation of fraud. *The words fraud or dishonesty do not have to be used.* The use of words which are inconsistent with the absence of fraud and dishonesty is enough. *It is enough, therefore, to plead that the defendant was party to an unlawful means of conspiracy since such involvement is wholly inconsistent with an absence of fraud or dishonesty.*

G [30] The time has surely come to make a stand. *We entirely agree* with the reasoning in *Davy v Garrett*, *Armitage v Nurse and others*, and *Three Rivers that it is not always necessary to plead the word 'fraud' if the facts which make the conduct fraudulent are pleaded.*

H **[18]** Even if this court was wrong in this matter, this court must staunchly remark that the evidence of fraud and conspiracy was profoundly glaring to the extent that it would be in the interest of justice for this court to make findings and take judicial notice of the brazen fraud and illegality of the conspiracy that had been perpetrated. It would be well against public policy if this court were I to ignore the glaring illegality that the fraudsters were attempting to enforce. This court shall take heed upon the Federal Court's call to vehemently cull and unravel illegalities as and when the illegality arises before the court EVEN IF THE ILLEGALITY WAS NOT PLEADED (see *Merong Mahawangsa Sdn Bhd & Anor v Dato' Shazryl Eskay bin Abdullah* [2015] 5 MLJ 619):

[35] *Clearly, therefore, courts are bound at all stages to take notice of illegality, whether ex facie or which later appears, even though not pleaded, and to refuse to enforce the contract.* In that regard, we endorse the following statement of law by the Court of Appeal per Hamid Sultan JCA, delivering the judgment of the court, in *China Road & Bridge Corp & Anor v DCX Technologies Sdn Bhd and another appeal* [2014] 5 MLJ 1:

At the outset we must say that the trial courts must be vigilant not to provide any relief on contracts which is void on the grounds of public policy, or illegality … whether or not it is the pleaded case of the parties or whether the issue was raised during the trial. The case of *Blay v Pollard & Morris* [1930] 1 KB 628 where Scrutton LJ observed:

> Cases must be decided on the issues on the record; and if it is desired to raise other issues they must be placed on the record by amendment which has been followed in a number of local cases will not stand to tie the hands of judges to deal with the above issues, or arrest impropriety on its own motion at *limine* …

[19] Thus, guided by the Federal Court's call, it would only be just and appropriate (and it would be well within this court's inherent jurisdiction) to address and unravel the rampant illegality (in the form of fraud and conspiracy) plaguing the sham SPA that the plaintiffs are now trying to enforce. It would be well within this court's authority to delve into the law and elements of fraud and conspiracy. This is further supported by the fact that s 24(c) of the Contracts Act also clearly stipulated that *AN AGREEMENT IS ILLEGAL OR UNLAWFUL IF 'IT IS FRAUDULENT'*. Thus, even if there was no literal pleading of the words 'fraud' or 'conspiracy' (in which this court believes there was sufficient pleaded facts of fraud and conspiracy), it remains well within this court's power to delve into the illegality of the sham SPA (which was illegal by fraud and conspiracy).

B. FACTS OF THE CASE

[20] As mentioned prior, Firwas Sdn Bhd ('defendant-vendor/Firwas') was a family business incorporated by one late James Puthucheary and his brothers on 25 October 1983. Three of the four brothers have since passed away. The company survived and is now held by the shareholding of James' widow, Mavis Puthucheary, Dominic and the estates of the three deceased brothers. Firwas is primarily left under the care, management, and representation of one Jasim Puthucheary ('Jasim') who is Firwas's Director and also son of the late James Puthucheary and Mavis Puthucheary. Firwas is the registered proprietor of a large parcel of land held under Lot No 49259, Geran 5238, Mukim Plentong, Daerah Johor Bahru, Johor Darul Takzim ('subject land').

B(i) The introduction of the fraudulent property agent Thevan to Firwas

[21] Firwas was desirous to sell the subject land. What the defendant thought was an opportunity to sell (but instead turned into an insidious ploy to defraud) was the introduction (by Jasim's now wife, Irene Raj Kumar ('Irene')) to Thevandran a/l Ragavan ('the fraudulent property agent/fraudulent Thevan/Thevan'). The fraudulent Thevan sought to abuse the close friendship he shared with Irene. In all dealings and negotiations regarding the subject land, Irene and Jasim had always worked in tandem (together with Mavis as shareholder) to represent Firwas's interest. In fact, it is by the ticket of Irene's friendship with fraudulent Thevan, that Firwas had approached Thevan to assist Firwas to find a prospective buyer of the subject land circa late 2017 and early 2018. Irene's active involvement and representation of Firwas was readily informed to, and acknowledged by Thevan in his WhatsApp conversation with Jasim on 24 January 2018:

[24/01/2018, 4:29:26 PM] Jasim: Thanks
[24/01/2018, 10:23:42 PM] Jasim: Chief Irene passed my letter and all seems good. A few points that the shareholders need clarification:
1. They are asking for a supplementary letter to your temporary receipt with regard to the 20m cash payment on top of the spa price which stipulates
2. How will the 20m payment be made without tax implications
3. That this 20m will be made on execution of spa by vendor.

[22] Thevan then introduced Firwas to the failed purchaser, Siva Kumar a/l Jeyapalan ('second plaintiff/Siva') who had offered to purchase the subject land for the purchase price of RM60m. Firwas (via Mavis, Jasim, or Irene) had never directly communicated with the second plaintiff. Instead, the negotiations were by and large orchestrated by the fraudulent Thevan (together with the fraudulent lawyer). Since the initial stages of negotiation, it was absolutely clear that Firwas was looking for at least a RM60m valuation for the purchase price. The mechanism of payment of the RM60m (via the temporary receipt and supplementary letter of undertaking by Thevan) was discussed as early as 24 January 2018 via the WhatsApp group correspondence between Jasim, Irene, and the fraudulent Thevan:

[05/02/2018, 10:17:56 PM] Jasim: Chief pls note that the 40m balance owing to fir as is not in this document. I am assuming he will get a minimum of 65m for the building and after settling the loan he will pay the balance 40 to Firwas to complete the spa

...

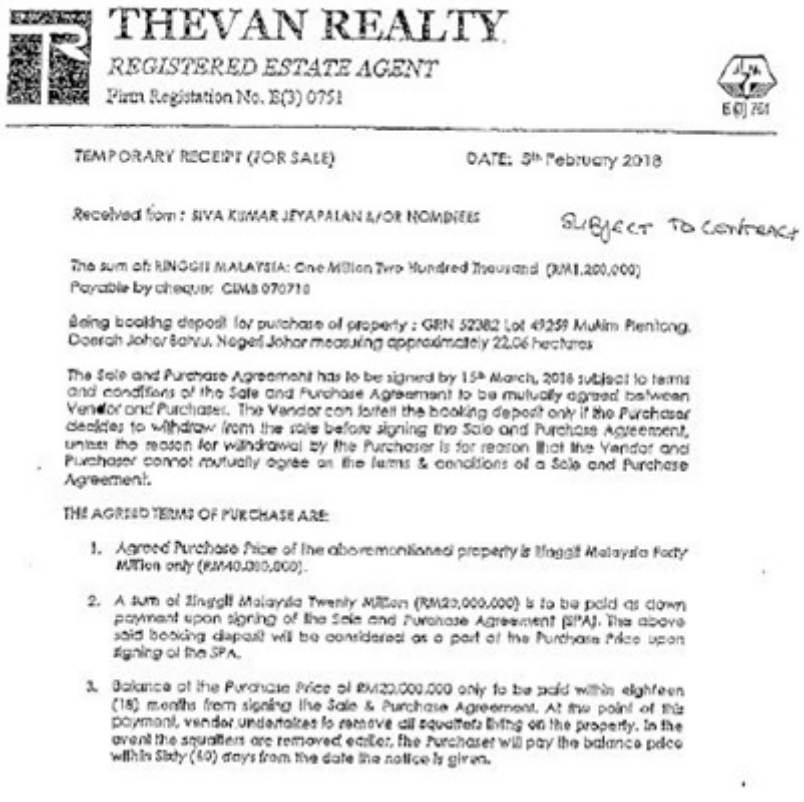
[06/02/2018, 8:56:29 AM] Thevan: So the payment will be as follows:
1. 20 m on 15 March 2018
2. 20m on 31 March 2019
3. 20m when we sell the pj building within another 12 months from 31 March 2019

[23] In the same WhatsApp group conversation, Thevan also shared a photo of a cheque allegedly issued by Siva for RM1.2m as earnest deposit to demonstrate Siva's commitment to further negotiate on the possible purchase of the subject land. The draft temporary receipt for RM40m and draft undertaking by Thevan for the third tranche of RM20m (total RM60m) was also shared within the same WhatsApp group conversation.

[24] From the outset, even without having to refer to the actual temporary receipt and the letter of undertaking signed by Thevan, it was already glaringly clear that the negotiated price had always been *RM60m and never for RM40m*. This was one of the many compelling reasons why this court has to record this court's disdain against the appalling attempt by the fraudulent Thevan and Siva to delude this court to believe that somehow Firwas had agreed to only go by the RM40m valuation in the temporary receipt. Against the backdrop of Thevan's own written admissions, Thevan and Siva still insisted to lie before this court despite the gruelling evidence that ran adversely against Thevan's and Siva's lies.

[25] Nevertheless, the evidence of fraudulent Thevan's and Siva's lies can be further cemented by further contemporaneous documents (which this court shall address further down this judgment). Following the WhatsApp group conversation, a meeting was held at the Mandarin Oriental Hotel on 2 March 2018 between Jasim, Irene, and the fraudulent Thevan ('MO Meeting'). During this MO Meeting, Thevan passed to Jasim a temporary receipt dated 5 February 2018 ('temporary receipt') which covers the first two tranches of the RM60m (total payment of RM40m) alongside the earnest deposit paid by Siva to Thevan. The temporary receipt was not at all a concluded contract but merely was Siva's avenue to demonstrate his intent and commitment to purchase the subject land. Negotiations have not yet properly begun and the purchase was still subject to a properly agreed and executed sale and purchase agreement:

A



THEVAN REALTY
REGISTERED ESTATE AGENT
Firm Registration No. E(3) 0751
E(I) 761

B

TEMPORARY RECEIPT (FOR SALE) DATE: 5th February 2018

Received from : SIVA KUMAR JEYAPALAN &/OR NOMINEES Subject To Contract

The sum of: RINGGIT MALAYSIA: One Million Two Hundred Thousand (RM1,200,000)
Payable by cheque: CIMB 070710

C

Being booking deposit for purchase of property : GRN 52382 Lot 49259 Mukim Plentong, Daerah Johor Bahru, Negeri Johor measuring approximately 22.06 hectares

The Sale and Purchase Agreement has to be signed by 15th March, 2018 subject to terms and conditions of the Sale and Purchase Agreement to be mutually agreed between Vendor and Purchaser. The Vendor can forfeit the booking deposit only if the Purchaser decides to withdraw from the sale before signing the Sale and Purchase Agreement, unless the reason for withdrawal by the Purchaser is for reason that the Vendor and Purchaser cannot mutually agree on the terms & conditions of a Sale and Purchase Agreement.

D

THE AGREED TERMS OF PURCHASE ARE:

1. Agreed Purchase Price of the aforementioned property is Ringgit Malaysia Forty Million only (RM40,000,000).
2. A sum of Ringgit Malaysia Twenty Million (RM20,000,000) is to be paid as down payment upon signing of the Sale and Purchase Agreement (SPA). The above said booking deposit will be considered as a part of the Purchase Price upon signing of the SPA.

E

3. Balance of the Purchase Price of RM20,000,000 only to be paid within eighteen (18) months from signing the Sale & Purchase Agreement. At the point of this payment, vendor undertakes to remove all squatters living on the property. In the event the squatters are removed earlier, the Purchaser will pay the balance price within Sixty (60) days from the date the notice is given.

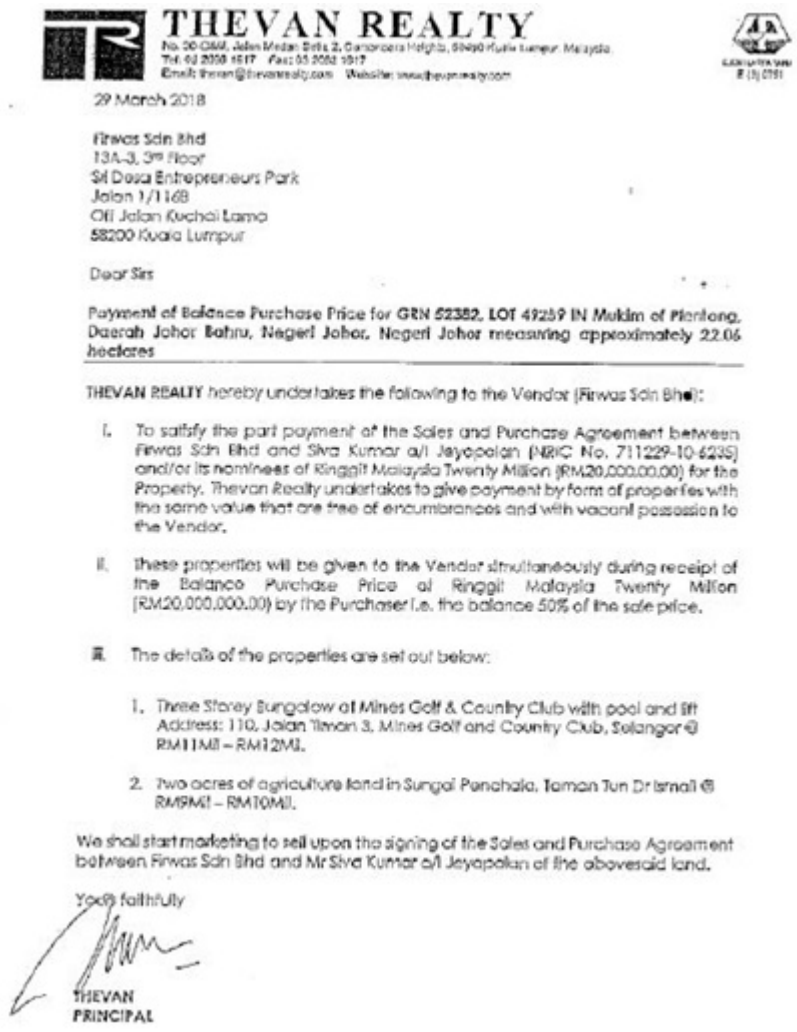
F

[26] Simultaneous to the temporary receipt, Thevan also signed and passed an undated letter of undertaking in which Thevan undertakes to ensure that Firwas be paid the third tranche of the RM60m via the transfer of two properties owned by Siva. This third tranche payment was negotiated to be transferred simultaneously with the cash payment of the second tranche RM20m stipulated in the temporary receipt. This undated letter of undertaking was later replaced by Thevan with a dated and signed letter of undertaking dated 29 March 2018 ('dated undertaking') which Thevan had forwarded via Whatsapp to Jasim on 5 April 2018. Despite the fact that the draft versions of the dated undertaking were clearly exchanged and discussed between Thevan himself, Irene, and Jasim between 27 February 2018 to 5 March 2018, Thevan still insisted on lying before this court regarding the authenticity of the letters of undertaking Thevan himself had signed:

G

H

I



THEVAN REALTY

29 March 2018

Firwas Sdn Bhd
13A-3, 3rd Floor
Sri Desa Entrepreneurs Park
Jalan 1/116B
Off Jalan Kuchai Lama
58200 Kuala Lumpur

Dear Sirs

Payment of Balance Purchase Price for GRN 52382, LOT 49259 IN Mukim of Plentong, Daerah Johor Bahru, Negeri Johor, Negeri Johor measuring approximately 22.06 hectares

THEVAN REALTY hereby undertakes the following to the Vendor (Firwas Sdn Bhd):

I. To satisfy the part payment of the Sales and Purchase Agreement between Firwas Sdn Bhd and Siva Kumar a/l Jeyapalan (NRIC No. 711229-10-6239) and/or its nominees of Ringgit Malaysia Twenty Million (RM20,000,00.00) for the Property. Thevan Realty undertakes to give payment by form of properties with the same value that are free of encumbrances and with vacant possession to the Vendor.

II. These properties will be given to the Vendor simultaneously during receipt of the Balance Purchase Price of Ringgit Malaysia Twenty Million (RM20,000,000.00) by the Purchaser i.e. the balance 50% of the sale price.

III. The details of the properties are set out below:

1. Three Storey Bungalow at Mines Golf & Country Club with pool and lift Address: 110, Jalan Taman 3, Mines Golf and Country Club, Selangor @ RM11Mil – RM12Mil.

2. Two acres of agriculture land in Sungai Penchala, Taman Tun Dr Ismail @ RM9Mil – RM10Mil.

We shall start marketing to sell upon the signing of the Sales and Purchase Agreement between Firwas Sdn Bhd and Mr Siva Kumar a/l Jeyapalan of the aboveside land.

Yours faithfully

THEVAN
PRINCIPAL

B(ii) The introduction of the fraudulent unqualified Lawyer Usha to Firwas

[27] Adding further misfortune to Firwas, the fraudulent Thevan had on 2 February 2018 introduced to Firwas, the legal conveyancing services of one Maragatham a/p Karuppiah ('fraudulent Usha/fraudulent lawyer/Usha'). It was well within evidence that fraudulent Usha was falsely holding herself out as a licensed lawyer when in truth, she was far from any legal qualification. Her LLB(hons) qualification printed on her (un)professional calling card was a total sham. Unbeknownst to Firwas, fraudulent Usha together with one of her 'fraudulent firm's' partners were currently facing criminal charges for her fraudulent and illegal practice. Usha was in actuality a deceitful pretender who

'ran' and salaried the operation of Messrs Mohd Faidzol Rahimi & Partners (now known as Chambers of Rahimi Ibrahim & Co) ('Usha's fraudulent firm'). The managing partner of Usha's fraudulent firm one Siti Nur Aliaa bt Shaik Khamarudin ('Siti') stood before this court in a tell-all testimony where she revealed the true fraudulent modus operandi of Usha's fraudulent firm:

DATO': Cik Aliaa, dalam firma anda, siapa mengendalikan akaun, semua akaun firma?

SITI: Siapa yang?

DATO': Siapa yang, who handles —

JUDGE: Siapa yang mengendalikan akaun firma tersebut? Siapa yang mengendalikan akaun firma tersebut? Duit masuk, duit keluar, cek masuk, cek keluar, siapa yang kendalikan?

SITI: Yang Arif, saya, boleh tak saya nak minta izin?

DATO': No, just answer the question.

SITI: Yang mengendali —

DATO': Jawapan soalan.

JUDGE: Tak, semalam Cik Aliaa kata Cik Aliaa bila jadi managing partners, tak tahu tentang kewangan, you buat fail sahaja. You buat fail sahaja. Jadi, dalam firm, you tak buat kewangan langsung. Jadi, kita nak tanya, kalau you tak buat kewangan, mengendalikan akaun, siapa yang buat kewangan dekat firm, firma Cik Aliaa?

SITI: Yang Arif, saya bercakap jujur bahawa semua keluar masuk duit adalah Usha.

JUDGE: Usha?

SITI: Bukan saya.

JUDGE: Saya bercakap jujur. Jujur pasal apa, kita Islam, kan? Pasal akhirat nanti, ya. Akhirat nanti. Kita tak tahu, nanti kalau kita tak minta maaf dekat orang —

SITI: Saya tersepit, Yang Arif.

JUDGE: Allah akan cari. Pasal saya hidup, 60 tahun saya hidup atas principle bercakap benar. Bukan kerana wang, bukan kerana material.

SITI: Saya tahu.

...

JUDGE: Saya nak bercakap benar, dan sebenarnya Usha yang mengendalikan?

SITI: Usha yang urus semua.

JUDGE: Ya?

SITI: Usha yang mengurus semua tentang pejabat.

JUDGE: Ok.

...

DATO': Sama ada Usha tidak ada jawatan official dalam pejabat, dia control semua?

SITI: Benar, Yang Arif.

JUDGE: Again?

DATO': Even though she does not have any official position in the firm, she controls the firm.

JUDGE: Walaupun dia tidak mempunyai apa-apa position, dia mengawal firma tersebut. Ini firma Rahimi lah, ya? Firma Rahimi, ya?

SITI: Chambers of Rahimi.

DATO': Sebenarnya, Cik Aliaa, Usha adalah tuan punya, Usha is the owner of the firm.

SITI: Ya.

[28] In fact, one Sebastian Fashiano Albert ('Albert'), the then Registrar for Brickfields Asia College ('BAC') had testified before this court that all of her BAC certificate or qualifications were all blatant forgeries. Usha neither had any degree from King's College nor was she ever offered an opportunity to do her CLP at BAC. Albert's testimony went entirely unchallenged. None of the counsels who were offered the opportunity to cross-examine, actually took the opportunity to cross-examine Albert's testimony regarding Usha's blatant forgeries and fraud. Thus, the factum of Usha's forgeries of her qualifications and Usha's fraudulent unlicensed law practice remained totally unchallenged and admitted by all parties.

[29] Shedding further light onto fraudulent Usha's treacherous ways was one Faidzol Rahimi (a former partner in Usha's fraudulent firm) who was already struck off the rolls due to prior professional misconduct ('Faidzol'). Faidzol testified before this court and had during cross-examination even admitted that the entirety of the firm was managed by fraudulent Usha to the extent that Faidzol admitted that *he had NO FUNCTION at all* within the firm:

Judge: Ok, itu untuk barang dokumen, jadi, urusan-urusan pengendalian oleh, transaksi ini, siapa yang uruskan?

FAIZOL: Usha dan kerani

...

Judge: Segala urusan Usha yang buat?

Faizol: Ya.

Judge: Segala mana itu, kewangan, Usha yang buat. So fungsi you kat firm itu apa? Saya nak Tanya fungsi you kat firm itu.

Faizol: TAK ADA FUNGSI, YANG ARIF.

[30] The extent of manipulation and deceit by Usha was so gruelling to the extent that Faidzol outright testified that Usha had abused Faidzol's qualifications as a lawyer to cover her unlawful activities of rendering illegal legal services without proper qualifications. This court pauses here to remark that both Faidzol and Aliaa's demeanour during their testimonies were reflective of their guilty conscience for illegally holding out Usha as a qualified

lawyer (when in truth she was merely a conniving fraudster). They knew of Usha's fraudulent modus operandi and they knew that Usha had hired them into the firm only to abuse their legal qualifications as lawyers:

> Judge: Wait, before. Jadi, *you ini sebenarnya dipergunakan lah* betul, *boleh saya kata you dipergunakan?*
>
> Faizol: *BOLEH, YANG ARIF.*

B(iii) The total and obvious failure as well as cease of negotiations with Siva

[31] Thus, the fraudulent Usha had from the very beginning of her introduction by fraudulent Thevan bore an insidious intent to fraudulently reap monetary benefits by fraudulently facilitating the sale of Firwas's subject land. Considering Usha's fraudulent beginnings, the fraudulent manner in which Usha and Thevan conducted their business were difficult to hide. Their fraudulent design gradually slipped through the cracks. Firwas via Irene, Jasim, and Mavis was constantly perplexed by Usha's insistence to not follow their instructions and insistence to clearly and honestly stipulate the purchase price of RM60m and the mechanism of payment of the full purchase price *in one singular SPA*. Usha had always came up with draft sham SPAs which never spelled out the RM60m despite numerous instructions to consolidate all of the payment mechanism within one singular SPA. Usha's insistence even heightened Jasim's cautiousness as to not be implicated with any criminal charges for tax evasion.

[32] As Usha was the supposed conveyancing lawyer suggested by Thevan, Jasim had clearly voiced out his disagreements with all of the draft sham SPAs which were prepared by fraudulent Usha to both Thevan and Usha. Jasim was unequivocally concerned that everything that Usha had prepared was not even legally enforceable or was nowhere close to reflecting the terms negotiated for the sale of the subject land. One of the core errors that Thevan and Usha peculiarly always had failed to rectify was the manner and method the third tranche of the RM60m was supposed to be paid. Jasim had always remained resolute that all of the RM60m shall be paid by cash means. However, Usha and Thevan kept on failing to amend the draft SPAs and kept on insisting that the third tranche be paid by the transfer of two other properties owned by Siva:

> [30/03/2018, 1:23:04 PM] Jasim: Chief the letter says that payment of the 20m balance will be satisfied through the transfer of the two properties. *I think this has to be reworded to say that the 20m will be satisfied in cash from the sale proceeds of the 2 properties.* Once this payment is received the property will be transferred under the spa
>
> [30/03/2018, 123:17 PM] Jasim: Can I collect later today chief
>
> [02/04/2018, 10:25:59 AM] *Jasim: Chief my side has a concern that they will agree to transfer the property under the spa for 40m whether or not the balance 20m is paid or not. They are concerned that they may not receive the balance.* Basically they are saying

that is not the way the sale should be done. Can you assist to give a solution to this? one way is to include this as an additional instruction to the purchasers solicitors so they have to receive the 20m from you and pass this to our solicitors before they can register the transfer. Is that ok?

[02/04/2016, 10:45:30 AM] *Thevan: Oh my.*

[33] Despite Jasim's clear instructions, Thevan merely just sent the dated undertaking and had not endeavoured to ensure that the next draft SPA be amended to reflect the terms Firwas had always intended. AND BY THEVAN'S OWN WORDS, THEVAN ADMITTED THAT *'THE DEAL WILL FALL'* if Firwas continues to insist on the cash payment of the final third tranche of the RM60m (which Firwas indeed had insisted on):

[05/04/2018, 2:34:39 PM] Thevan: 20180405142007696 1 page attached 00000305-20180405142007696.dE>[Undertaking date 29.3.2018 attached]

[05/04/2018, 2:46:52 PM] *Jasim*: Chief I appreciate the changes made. *However I have been instructed that the 20m cash must be available to us at the time the transfer Is to be done. I don't know how to accomplish this.*

[05/04/2018, 2:50:15 PM] *Thevan: Aiyo*

[05/04/2018, 2:50:21 PM] *Thevan: The deal will fall*

[05/04/2018, 3:09:47 PM] *Jasim: I can't do much to change their decision. I have tried my best. They need certainty in receiving cash when transfer is to be done.*

[34] Despite being informed by Firwas that the negotiations are already at the precipice (cliff) of failure, fraudulent Usha was still not able (or was intentionally reluctant) to prepare a draft SPA which would effectively incorporate Firwas's terms. Firwas was resoundingly frustrated and had on 10 April 2018 indicated its intent to cease dealings with Usha and to appoint new lawyers to best represent Firwas's interest. Upon being informed of Firwas's intent, Thevan desperately scuttled and informed Firwas that he would speak to Usha to rectify the matter:

[10/04/2018, 2:35:42 PM] *Jasim: Chief I've gone through the two agreements sent by Usha and on top of general mistakes and inconsistencies, my comments before on the relationship of the 2 documents remains. I have asked her to clear up the documents and then explain to me how the documents are legally enforceable. If she can't complete this step I suggest proceeding with someone else because we are losing too much time on getting this right*.

[10/04/2018, 2:36:56 PM] Thevan: Let me speak to Usha.

[35] Up to this point, it was already apparent that even as early as 5 April 2018, negotiations have failed and not even one of the draft sham SPAs prepared by fraudulent Usha was accepted by Firwas or any representatives of Firwas. Fraudulent Thevan had in clear terms expressed that the negotiations with Siva 'WILL FALL' if Firwas still insisted on the terms they had already

intimated to both fraudulent Usha and fraudulent Thevan. Thus, considering that Firwas remained unmoved and insistent on its terms, it should have been abundantly clear to both Usha and Thevan that Firwas had never agreed to the sale to Siva.

[36] Two months had passed since Firwas's clear, absolute, and unmitigated rejection of the negotiation with Siva. Despite the clear ceasing of negotiations, fraudulent Usha still attempted to protract her scheme to falsely commit Firwas to the sham SPAs that she had drawn up. Despite the clear failure of negotiation, Usha still sent a single draft SPA for the wrong purchase price of RM40m (in clear contravention of Firwas's instruction and intent) on 4 June 2018. *It must be kept strictly in mind that Firwas had NEVER signed any of the sham SPAs prepared by fraudulent Usha.*

[37] Considering the failure of negotiations, it was apparent that Firwas was free to deal with the subject land as it pleases. The temporary receipt from the outset was never a binding contract to begin with as it was merely an 'agreement to agree' or an agreement subject to the finalisation and th execution of a formal contract. In accordance to Firwas's indefeasible rights as registered proprietor, Firwas successfully secured an agreement to sell the subject land to Dato Lee of Eastern Titan on 12 June 2018.

[38] Irene as one of the known representatives of Firwas had in clear terms informed fraudulent Thevan that Firwas and Mavis (as shareholder) were no longer interested to negotiate with Siva. Irene in clear and unambiguous terms informed Thevan via Whatsapp on 18 June 2018 that the negotiation is 'gone' and that Mavis does not want to proceed with the draft SPAs prepared by Usha:

17/06/2018, 13:50 — IR: Abang

17/06/2018, 13:51 — IR: the shareholders are meeting today. JP's mom does not want to do the deal.

17/96/2018 14:03 — TR: Oh

17/06/2018, 14:11 — TR: Call

17/06/2018, 14:11 — TR: I call nirvana?

17/06/2018, 14:12 — IR: Can't afford nirvana

17/06/2018, 14:13 — TR: ...

17/06/2018, 14:14 — TR: Find out why? Perhaps work on that to correct it?

17/06/2018, 14:16 — IR: With all the constant changes, she is very unhappy.

17/6/2018, 14:18 — TR: No more changes

17/06/2018, 14:18 — TR: It's almost there.

17/06/2018, 14:19 — IR: Yes, and they have not agreed from the previous

17/06/2018, 14:19 — TR: Ok. Call when u can

17/06/2018, 14:19 — TR:, tj

18/06/2018, 10:08 — IR: Good morning

18/06/2018, 10:13 — TR: Salam

18/06/2018, 10:19 — IR: Its gone

18/06/2018, 10:19 — TR: ...

18/06/2018, 10:20 — TR: Good la

18/06/2018, 10:20 — TR: Reason?

18/06/2018, 10:21 — TR:

18/06/2018, 10:21 — TR: What to do lo ...

18/06/2018, 10:21 — IR: She does not want to go ahead because she is unhappy with constant addendums.

18/06/2018, 10:22 — TR: Must give her a chill pill

18/06/2018, 10:22 — TR: ...

18/06/2018, 10:22 — TR: And vodka

18/06/2018, 10:22 — IR: She said she has decided and no more talking

[39] Despite having full knowledge and awareness of Firwas's decision to not proceed with the sale to Siva, Thevan had already begun to spur his fraudulent scheme by knowingly withholding Irene's communication from Siva. Fraudulent Thevan testified before this court that he had done so on the pretext that Irene's communication was somehow 'inconclusive'. Thevan's testimony over the 'conclusiveness' of Irene's communication was one of the barrage of instances of Thevan's outright lie and self-contradictions before this court. Despite denying the conclusiveness of Irene's communication, Thevan himself by his own *viva voce* testimony before this court admitted that he himself understood that Irene's whatsapp message indeed conclusively indicated that either:

(a) Firwas does not want to sell the subject land to Siva:

> DATO': OK, let's read it together. So Irene is now sending you a text saying 'Abang' and then she says, 'The shareholders are meeting today. JP's mom does not want to deal'. You said 'Oh. call' and then you said 'I will call Nirvana. And Irene says, 'I can't afford Nirvana. Find out why? Perhaps work out that to correct it'. Let's pause here. The shareholders are meeting today. Irene's mom does not want to deal. What do you understand by that?
>
> THEVAN: What I understand from here is that they don't want to sell lah.

(b) that the negotiation or deal with Siva has ceased or was 'gone':

> DATO': Ok, thank you. And then she said, you are asked for to find why and perhaps, you said, 'Find out why. Perhaps work on that to correct it'. Then she says, 'With all the constant changes, she is very unhappy'. Then you say 'No

more changes, It's almost there'. And then she says, 'Yes, and they have not agreed with the previous'. Then Irene says, 'Ok, call me when you can'. Then there's thumbs up, thumbs up thumbs up and then the next day, next morning at 10:20AM in the morning, sorry at 10:19AM in the morning, I beg your pardon, at 10:08 AM on the morning. on the 18/06/2018 at 10:08AM Irene sends a text saying, 'Good morning' and then u say 'Salam'. And then she says 'It's gone'. Then you thumbs up. What do you understand by 'It's gone'?

THEVAN: What it says here 'It's gone' is that I think the deal is gone. Her mother doesn't sell.

(c) that Irene was clear in saying that the deal is 'off':

DATO': Ok. 'Ok lah, the reason. What to do lah. She does not want to go ahead because she is unhappy with the constant addendums. Must giver her a chill pill'. Then you giver her, I don't what kind of face this is. And she says, and then you said 'And Vodka'. 'She said she has decided and no more talking'. So you understand by that, that the deal is off, right?

THEVAN: Yes, it says here clearly that the deal is off.

[40] The fact that Thevan spurred further continuation of the negotiation despite Irene's clear and resolute termination of the negotiation was simply confounding. Thevan then informed of the ceasing of negotiation to Usha. Usha in turn, in clear and unequivocal terms had admitted and acknowledged that the negotiation has been 'ABORTED'. Fraudulent Usha had recorded as such in writing via her email to Thevan dated 18 June 2019 which was forwarded by Thevan to Irene ('Usha's abortion email'). Usha had also enclosed her firm's invoice for conveyancing work done:

From: Usha Usha <usha.mfpartners@gmail.com>
Date: Mon, 18 Jun 2018, 12:19
Subject: Bill for Firwas Sale and Purchase Agreement
To: thevanrealty TR <thevanrealty@gmail.com>

Dear Mr.Thevan

We were given understand that the Sale and Purchase transaction has been aborted.

Please find attach herein the Bill for Firwas Sale and Purchase Agreement for your attention and early settlement by the Vendor.

Further, Please be informed that RM7,223.50 has been paid on behalf of Firwas Sdn Bhd being the settlement of Cukai Taksiran and Cukai Tanah in respect of the said property.

Thank you

--
Regards
Usha
Messrs. Mohd Faidzol Rahimi & Partners
Advocates & Solicitors
Suite 505, 5th Floor, Block A
Kelana Business Centre
97, Jalan SS 7/2, Kelana Jaya
47301 Petaling Jaya
Selangor Darul Ehsan.
Tel No.03-78037566/03-78806745 / 78806746 & Fax No.03-78037177
(Mobile 016-3917566)
Email Address: usha.mfpartners@gmail.com

[41] It was glaringly obvious that even fraudulent Usha had acknowledged that the negotiations between Firwas and Siva *'had been aborted'*. There literally was not any room whatsoever for fraudulent Usha, and fraudulent Thevan to squirm and to delude this court to believe that there has not been any outright termination by Firwas. It must be strictly kept in mind that Usha's abortion email here was sent to Thevan and Thevan had forwarded the same to Irene. If Thevan genuinely believed that the termination was inconclusive, then Thevan should have replied to Usha's email to set the record straight. The fact that Thevan had never bothered to 'correct' Usha simply proves the truth of the matter that indeed the negotiations had already been entirely aborted without any room for confusion or uncertainty.

[42] Following the consistent resolution to cease all negotiations with Siva, even Jasim had sent an email dated 18 June 2018 to clearly put on record that Usha consistently failed to abide by Firwas's comments and instruction to amend the terms within the draft sham SPAs. Jasim further recorded that Firwas does not agree whatsoever to the draft sham SPAs prepared and sent by the fraudulent Usha:

From: Jasim Puthucheary <jasim.puthucheary@gmail.com>
Date: Mon, 18 Jun 2018 at 16:47
Subject: Re: Sale and Purchase Agreement
To: Usha Usha <usha.mrpartners@gmail.com>
Cc: Irene Raj <irenejraj@gmail.com>

Dear Usha

The directors of Firwas have reviewed the numerous drafts. Despite our comments on certain clauses the drafts remain substantially the same. We reiterate that we do not agree to the latest drafts submitted for reasons that have been discussed earlier.

Thank you

Jasim

[43] The end and total cease of negotiations between Firwas and Siva could not have been clearer. Fraudulent Usha had by email confirmed that the sale was aborted. Adding further finality to the abortion was the fact that Usha herself had issued a final bill for the conveyancing work she had fraudulently done under the guise of the fraudulent firm. But despite the clear and total abortion of the negotiations, Thevan, Usha, and now, the fraudulent Siva began to collude and turn the wheels of their tri-partite concerted fraud to falsely commit Firwas to the sham SPA prepared by Usha.

B(iv) The tri-partite concerted fraud of fraudulent Thevan, fraudulent Usha, and the fraudulent second plaintiff, Siva

[44] Now, before this court delves into the inner workings of the tri-partite fraud, this court must address Siva's testimony before this court that Siva

allegedly had no knowledge of the sale by Firwas to Eastern Titan, and had only relied on Thevan's and Usha's say-so as agents of Firwas. This was one of the many excruciatingly obvious lies and deception that riddled the entirety of Siva's testimony.

[45] Siva attempted to feign ignorance and 'innocence' as though he had proceeded to sign the sham SPA prepared by fraudulent Usha and had proceeded to allegedly pay a further RM4.8m deposit to Usha's fraudulent firm as he was unaware of the sale to Eastern Titan. But this entire façade of a testimony can be debunked by referring to the close, direct, and interpersonal WhatsApp group conversations shared between the three fraudsters Usha, Thevan and Siva. *Bear in mind that all of these fraudulent scheming had transpired AFTER Firwas's sale to Eastern Titan and AFTER all three of the fraudsters already knew that the negotiations have entirely failed and Firwas had sold the subject land Eastern Titan*.

[46] Before the fraudulent 'acceptance' of Usha's sham SPA on 2 June 2018, it was fraudulent Siva himself who had 'alerted' Thevan and Usha on 26 June 2018 (two weeks before the fraudulent acceptance of the sham SPA) of the fact that Firwas had sold the land to Eastern Titan. It was Thevan who shared photos of the power of attorney issued by Firwas to Eastern Titan under the sale to Eastern Titan:

(a) WhatsApp between Usha and Siva on 26 June 2018 and 27 June 2018:

> 26/6/2018, 19:30 — Siva Kumar: [23 Images on land clearing at the Property - B11, pp 15–18]
>
> *27/6/2018, 11:20 — Siva Kumar: [3 Images of Power of Attomey- B11, pp 19–21]*
>
> *27/6/2018, 11:20 — Siva Kumar: They have sold the land … pls check*
>
> 27/6/2018, 11:42 — Siva Kumar: [1 Image of Power of Attorney and 2 Images of land clearing at the Property — B11 — pp 22–24]

(b) WhatsApp between Thevan and Siva on 26 June 2018 and 27 June 2018:

> 26/06/2018, 14:10 — Siva Kumar: [8 Images land clearing at the Property- B6, pp 106–109]
>
> 26/06/2018, 14:14 — Siva kumar: [2 Images land clearing at the Property - B6, p 110]
>
> 26/06/2018, 14:16 — Siva Kumar: [Image of land clearing at the Property- B6, p 111]
>
> 26/06/2018, 14:16 — Siva Kumar: Media omitted
>
> 26/06/2018, 14:16 — Siva Kumar: Media omitted

26/06/2018, 14:16 — Siva Kumar: Media omitted

26/06/2018, 14:16 — Siva Kumar: Media omitted

26/06/2018, 14:31 — Siva Kumar: I am in JB till tomorrow. My flight is at 6pm ... can come to arrow and make police report ect will b good. I can join u guys.

26/06/2018, 14:31 — Thevan R: Ok

26/06/2818, 20:00 — Siva Kumar: [Image of land clearing at the Property-B6, p 111]

26/06/2018, 20:01 — Siva Kumar: Red 15 location where land is cleared Now

26/06/2018, 20:04 — Siva Kumar: <Media omitted>

6/06/2018, 20:05 — Siva Kumar: Need to rotate this anti clockwise to match the earlier map

26/06/2081, 20:05 — Thevan R: Ok.

26/06/2018, 21:43 — Thevan R: Chief No news as of yet. Will chat am

26/06/2018, 21:48 — Siva Kumar: Ok sir,

27/06/2018, 11:15 — Siva Kumar: [1 Image of Power of Attorney and 2 Images of land clearing at the Property — B11 — pp 22–24]

27/06/2018, 11:20 — Siva Kumar: <Media omitted>

27/06/2018, 11:20 — Siva Kumar: <Media omitted>

27/06/2018, 11:21 — Thevan R: Oh my

27/06/2018, 11:22 — Siva Kumar: Pls call me sir

27/06/2018, 11:25 — Thevan R: Ok Chief

27/06/2018, 11:41 — Thevan R: <Media omitted>

27/06/2018, 11:41 — Siva Kumar; <Media omitted> -y PoA

27/06/2018, 11:41 — Siva Kumar; <Media omitted>

27/06/2018, 11:41 — Siva Kumar: <Media omitted>

27/06/2018, 11:41 — Siva Kumar: <Media omitted

27/06/2018, 11:59 — Siva Kumar: There was also a police report made by Eastern Titan to do the land clearing.

[47] Thus, without a shade of doubt, Siva had colluded with Thevan and Usha ('fraudulent trio') as the fraudulent trio to fabricate a narrative of 'innocence' and innocent reliance on the agent-principal relationship between Firwas, Thevan and Usha. Siva knew well ahead of the fraudulent acceptance on 2 June 2018 that the negotiations have failed and that the subject land has already been sold to Eastern Titan. The first step taken to actuate the tri-partite

fraud was that Thevan instructed Usha to lie and deceive Ms Selvi into believing that Firwas had agreed upon the last draft sham SPA Usha had prepared. This lie was clearly reflected within Ms Selvi's email to fraudulent Usha on 20 June 2018:

Selvi Kanagasabai

From: Selvi Kanagasabai
Sent: Wednesday, 20 June, 2018 6:30 PM
To: Usha Usha
Cc: 'mrsiva_kumar@yahoo.com'
Subject: RE: Comments to the proposed terms - DOU (Johor Land)
Attachments: 20180620181417538.pdf

Dear Usha,
Pursuant to my discussion this afternoon you have informed me that the final draft SPA was good to go but I have after discussion with Mr.Siva have found some small discrepancies which need to be amended. I have made minor amendments to give a clearer picture for benefit of both parties. Please confirm if it is accepted so I can engross on the same. Meanwhile for your information the copies on signing page has been executed by Siva and pending your confirmation on the terms and the agreement appended herein. Mr.Siva has also deposited the balance of the deposit for our onward transmission to your good office.
The amended draft SPA will be attached in the subsequent email.
Thank you
Best Regards
SELVI KANAGASABAI
Partner
For and on behalf of
M/s. Adha, Selvi & Associates
Tel : 03-22874696
Fax : 03-22873170

[48] During cross-examination, Usha effectively admitted her fraudulent collusion with fraudulent Thevan as she had admitted that she had 'accepted' the draft sham SPA on the *instruction of Thevan and NOT OF HER OWN CLIENT, Firwas*. When questioned further, fraudulent Usha *even ADMITTED THAT SHE HAD NOT VERIFIED THE ACCEPTANCE DIRECTLY WITH FIRWAS* and was fraudulently adamant to only rely only on fraudulent Thevan's say-so. It was truly unimaginable that a lawyer (albeit a fraudster in this case) would not even care to get direct and personal confirmation from her own client especially when the mandate she undertook was at least valued at a life-altering sum of RM60m:

> DATO': Ok, it's fine, your explanations I'm not interested. Now, come back again, on the 20th, when it came to informing Selvi that the agreements were good to go, you were basing that on instructions from Thevan, yes?
>
> MARA: Yes, Mr Thevan said.
>
> DATO': Ok, And not from your client, supposed your client, yes, Firwas? You did not take instructions from Firwas, you took instructions from Thevan, yes?
>
> MARA: No, Mr Thevann said Mr Jasim told him. There's no such thing as aborting the sales, so he said can proceed.
>
> ...

DATO': Thank you. And you did not check with Jasim whether the sale was going ahead, did you?

MARA: No, I sent the email.

DATO': You did not check with Jasim whether the sale was going ahead or not, did you?

MARA: No.

[49] It must be remembered that this communication between Selvi and Usha had occurred despite the fact that Usha had confirmed (earlier in time) via email that the negotiation had been aborted. This gross self-contradiction was thoroughly inexplicable and can only logically be inferred as an intentional deception to lay the foundation to the tri-partite fraud. Thereafter on 2 June 2018, Siva instructed Selvi to pass the sham SPA which he had signed together with the cheque for the deposit balance to Usha. With the fraudulent 'acceptance' and alleged payment of the deposit balance, the fraudulent trio effectively fabricated a narrative as though Firwas had already committed itself to be bound by the sham SPA (despite the fact that Firwas never signed nor had ever agreed to any of the sham SPA prepared by the fraudulent Usha).

[50] In furtherance of the tri-partite fraud, Usha had via her email on 5 June 2018 to Jasim sought for Jasim's instructions despite Usha having fully admitted and acknowledged that *the negotiations have been aborted since 18 June 2018*. Jasim on 12 June 2018 had clearly put on record via an email to Shoba (one of partners of Usha's fraudulent firm) which was also copied to Usha, that Firwas had never at any time approved of any of the sham SPAs prepared by Usha and that negotiations have already been recorded to be aborted by Usha herself:

Jasim Puthucheary <jasim.puthucheary@gmail.com> Thu, Jul 12, 2018 at 6:06 PM
To: shoba govindasamy <shoba.mfrpartners@gmail.com>
Cc: Irene Raj <irenejraj@gmail.com>, Usha Usha <usha.mfrpartners@gmail.com>

Dear Shoba

We refer to your email of 28 June enclosing an invoice dated 1 June.

We take objection to your invoice and letter and state that we have never agreed to your alleged fee and would like the bill to be taxed.

As admitted by your goodself, the agreement was a standard agreement prepared by the solicitors for the potential purchaser, and it was never executed. To begin with we see that there was no substantial work was carried out by your goodself. Further, you had even refused to incorporate our suggestions to the agreement when forwarded. As such your labour has been very minimal in nature.

Following that, the said transaction was also aborted as the draft agreements were never approved by us.

However, on a strictly without prejudice basis, to maintain our cordial relationship, we are willing a propose RM3,000.00 for your work done on the matter and have this issue settled between us.

We look forward to your kind acceptance of our without prejudice offer.

Thank you

[51] The tri-partite fraudulent scheme continued when fraudulent Siva had wrongfully lodged a caveat on the subject land. On 30 August 2018 Siva whatsapped Dato Lee informing him that he had lodged a caveat onto the subject land and that he already had paid RM6m deposit to Firwas under the sham SPA.

[52] And as a final act of the fraudulent trio's fraudulent machinations, the fraudulent Siva had the audacity to sully this court's doorstep and filed the main claim against Firwas for damages and to specifically enforce the sham SPA which Firwas had neither executed nor ever agreed to. The fraudulent Thevan also had the gall to file a counterclaim to support Siva's unlawful attempt to enforce the sham SPA while also claiming to declare that the earnest deposit he had received from Siva is rightfully his as his 'agency fees'. Firwas astutely defended against all the claims and had also filed its own counterclaim against the plaintiffs, fraudulent Thevan, and Shoba a/p Govindasamy (as a partner of Usha's fraudulent firm), inter alia, for consequential order to remove the unlawful caveat lodged by fraudulent Siva, damages for the unlawful lodgment of the caveat, as well as damages for breach of fiduciary duty, fraud, and conspiracy.

[53] This court went over many challenging days' worth of Notes of Evidence, ploughed through voluminous documents and written submissions across the plaintiffs' sham main claim, Thevan's sham counterclaim, and Firwas's counterclaim and this court is of the view that the case before this court can be determined by gradually addressing and answering the following issues:

(a) *preliminary issue 1*: Whether or not there were any merits to Thevan's, Shoba's and the plaintiffs' perplexing challenge as to Jasim's and Irene's representative capacity to represent the interest of Firwas;

(b) *preliminary issue 2*: Siva, fraudulent Thevan, and fraudulent Usha were deceitful witnesses with critically impugned credibility;

(c) whether or not Siva can 'innocently' rely on the ostensible authority of fraudulent Thevan, and fraudulent Usha to falsely commit Firwas to the sham SPA prepared by Usha;

(d) whether or not Firwas was bound to the terms of the sham SPA which it had never signed or ever agreed to; and

(e) whether or not fraudulent Siva, fraudulent Thevan, and fraudulent Usha (and her fraudulent firm) had all colluded in a concerted tri-partite scheme to fraudulently force Firwas to commit to the sham SPA.

C. PRELIMINARY ISSUE 1: WHETHER THERE WERE ANY MERITS TO THEVAN'S, SHOBA'S AND THE PLAINTIFFS' PERPLEXING CHALLENGE AS TO JASIM'S AND IRENE'S REPRESENTATIVE CAPACITY TO REPRESENT THE INTEREST OF FIRWAS.

[54] This court is beckoned to first address a preliminary issue raised by the plaintiffs, Thevan, and Shoba. In typical fashion of a deceitful and sham claim, there are bound to be inexplicable discrepancies, self-contradictions as and when untruthful litigants were no longer able to bend the truth of a matter. One perplexing contradiction which arose from the plaintiffs', Thevan's, and Shoba's case were their awkward and self-defeating challenge against Jasim's and Irene's authority to represent Firwas.

[55] Thevan and Shoba raised this challenge in their attempt to deflect any fiduciary duty as claimed by Firwas. By their flawed logic, as Jasim and Irene were not legal representatives of Firwas, they had no authority to appoint either Thevan or Shoba as fiduciaries. The plaintiffs on the other hand was attempting to impugn the validity of the termination communicated by Firwas via Jasim and Irene.

[56] These challenges were befuddling firstly because it goes against the very fabric of their sham claims against Firwas. By plain logic and law, if Jasim and Irene both had no authority to speak for Firwas, *then the entirety of the negotiation facilitated by Thevan and Usha across the temporary receipt until the sham SPA WERE ALL UNLAWFUL AND UNENFORCEABLE*. Thus, by this logic, the cases for Shoba, Thevan, and Siva would unceremoniously fail. It is certainly perplexing that Shoba, Thevan, and Siva would even consider staking this stance. The only viable explanation would be that they were thoroughly desperate and were merely raising false contentions at their whims without any proper consideration of plain logic and the unbendable truth which they know they cannot defeat.

[57] Secondly, these challenges would grossly contradict their own conduct in admitting and acknowledging Jasim's and Irene's representative capacity and authority to represent Firwas. If Jasim or Irene were genuinely believed to not have any authority, *then this court asks the rhetorical question, why did fraudulent Thevan, fraudulent Usha, and Shoba exclusively communicated with either Jasim or Irene in seeking instructions as to Firwas's position on the many draft sham SPAs prepared by Usha?* If Firwas's interest does not depend on Jasim's or Irene's say-so, then why did they bother dealing with Jasim and Irene at all? It is plain and obvious that all parties had acted in manners which clearly acknowledged Jasim's, Irene's, and Mavis's authority to represent the interest of Firwas.

[58] It is very apparent to this court that the plaintiffs, fraudulent Usha, and

fraudulent Thevan had no integrity and honest cohesion whatsoever in their cases. They contend arguments and negated the same arguments as and when they please and as and when the argument was ideal to their cases. They blew hot and cold. At one end they were more than willing to uphold Irene and Jasim's representative capacity of Firwas to commit Firwas to the temporary receipt and sham SPA but at the other extreme end they deny Jasim's and Irene's authority to represent Firwas in appointing Thevan, Usha, and the Usha's fraudulent firm as fiduciaries of Firwas.

[59] Estoppel shall apply to bar the plaintiffs, Shoba, Thevan, and Usha from inequitably denying the representative capacity of both Jasim and Irene. The principle of estoppel was very recently restated by the Court of Appeal in the case of *Ho Yau Hong & Ors v How Yaw Ming and another appeal* [2023] MLJU 933:

> [40] The Federal Court's decision in the case of *Boustead Trading (1985) Sdn Bhd v Arab Malaysian Merchant Bank Bhd* [1995] 3 MLJ 331 has cautioned against such adoption of contradictory stances:
>
> > When the parties to a transaction proceed on the basis of an underlying assumption either of fact or of law — whether due to misrepresentation or mistake makes no difference — on which they have conducted the dealings between them — neither of them will be allowed to go back on the assumption when it would be unfair or unjust to allow him to do so'. lt would facilitate moral decadence within our social structure.
>
> [41] Such approbating and reprobating of stances have also been cautioned against by the Court of Appeal in the case of *Cheah Theam Kheng v City Centre Sdn Bhd (in liquidation) and other appeals* [2012] 1 MLJ 761; [2012] 2 CLJ 16 which had held the following:
>
> > In other words of Sir Nicolas Browne-Wilkinson VC in *Express Newspapers Plc v News (UK) Ltd and Others* [1990] 3 All ER 376 at pp 383 to 384: There is a principle of law of general application that it is not possible to approbate and reprobate. That means you are not allowed to blow hot and cold in the attitude that you adopt. A man cannot adopt two inconsistent attitudes towards another: he must elect between them and, having elected to adopt one stance, cannot thereafter be permitted to go back and adopt an inconsistent stance'

[60] Effectively thus, the plaintiffs, Thevan, Usha, and Shoba are all estopped from denying Jasim's and Irene's authority to conclusively terminate the negotiations with Siva. The negotiations were validly terminated and no parties have any rights to impede on Firwas's rights to sell the subject land to Eastern Titan.

D. PRELIMINARY ISSUE 2: SIVA, FRAUDULENT THEVAN, AND FRAUDULENT USHA WERE DECEITFUL WITNESSES WITH CRITICALLY IMPUGNED CREDIBILITY

[61] As this court has mentioned prior, the extent of deceit and dishonesty emanating from the plaintiffs' witnesses were astounding and confounding. The deceit was glaring as Siva, Thevan, and Usha could not stand against the overwhelming evidence which ran adversely against their fraudulent narrative. They were caught in their web of lies as the cross-examinations and even their own documents gradually chip away their lies and reveal the real truth of the matter. Siva, Thevan, and Usha in actuality had a plethora of deceits and inconsistencies that they were unable to clarify or rationalise. However, this court is of the mind that it shall suffice that this court highlights the more profound deceits that the fraudulent trio could not justify.

D(i) Usha's admission to perjury and falsification of Bank Documents

[62] One of the core contention led by the fraudulent trio to commit Firwas to the sham SPA was that Firwas (via the fraudulent firm) had accepted a further RM4.8m from Siva (which Siva allegedly had paid to Usha's fraudulent firm). It was this further payment of deposit that the fraudulent trio had leveraged to somehow prove that Firwas had agreed (and had obtained monetary benefit) from the deal with Siva.

[63] But it was utterly detestable when this court discovered that fraudulent Usha herself, upon cross-examination, *had ADMITTED TO PERJURY AND FALSIFICATION OF BANK DOCUMENTS to reflect the supposed receipt of RM4.8m by the fraudulent firm*.

[64] The perjury and forgery were unearthed when Firwas called to challenge the truth of the alleged receipt of RM4.8m by Usha's fraudulent firm. Usha had attempted to prove receipt of the monies by tendering into the court a totally perjured AmBank account ctatement which supposedly showed that firm's account had a balance of *RM4,808,048.22*. AmBank officers were called to testify and the officers testified that *the figures in the account statement had been ALTERED*. In actuality, the real and authentic account statement indicated that the firm's account only had *RM48.22*.

[65] When faced with the evidence of this perjury, F*RAUDULENT USHA ADMITTED THAT SHE WAS THE PERSON WHO HAD ARRANGED AND INSTRUCTED THE PERJURY OF THE ACCOUNT STATEMENT*:

JUDGE: Is this letter forged document or fake document? I'm asking you.

MARA: Forged.

JUDGE: Forged document. Louder.

MARA: Forged.

JUDGE: You're giving this Court forged document. Am I right? Answer my question. Ms Usha?

MARA: Yes

...

DATO': Why did u need to forge this letter? Why do you need to produce this account? Why do you need to produce this? What were you hoping to achieve? Why did you do it? I mean, why did you come with this false balance to show that you had RM4.8 million in the account? Why? Who asked you to do that?

MARA: No one. I did myself.

[66] The lengths and extent fraudulent Usha would endeavour to sell her deception was immeasurable. It was not beneath Usha to tender into this court forgeries and perjury. This ran consistent with fraudulent Usha's fraudulent constitution from the very setup of her fraudulent firm. It is second nature to Usha to lie and deceive. It is not at all far-fetched that Usha had ill-intentions from the very beginning of her introduction to Firwas by fraudulent Thevan.

[67] The only lacklustre justification fraudulent Usha could muster was that she was cornered to commit the forgery because Faidzol had absconded with the monies. But even this falsity does not make any sense as there should be no reason for Usha to risk her own reputation and position to cover up Faidzol's supposed abscondment of the monies. It would have been far simpler and far more ideal for Usha to just pass the buck to Faidzol. But this was not at all the case here. For some inexplicable reason, Usha would risk her own neck to cover Faidzol's abscondment. In truth, it was thoroughly more probable than not that Usha had committed the forgery not to hide Faidzol's abscondment *but instead to FALSELY CREATE DOCUMENTS TO PROVE PAYMENT OF RM4.8m BY SIVA TO FURTHER CEMENT THE TRIPARTITE FRAUD*.

[68] When cross-examined on her falsified qualifications as a lawyer, Usha could only repeat bare denials of BAC's registrar's evidence of proving her forgery of her BAC certificates. Almost anything and everything regarding Usha was fraudulent and were forgeries. Her BAC qualifications was a scam, the SPAs she had illegally prepared were a sham, and now even her firm's own bank statement was admitted to be a total sham.

[69] We have already delved into Usha's fraudulent 'acceptance' of the sham SPA on behalf of Firwas in the earlier part of this judgment. Adding further damage to Usha's fraudulent indulgence (debauchery), she was also lying on the supposed 'agreed' selling price of the subject land. It was clearly recorded in writing that Firwas had always insisted on a RM60m purchase price.

Documents were even prepared to attempt to construct a mechanism in which Firwas would in some manner receive RM60m. Nonetheless, despite all these immutable evidence, Usha still insisted on lying before this court and insisted on the RM40m sham purchase price prescribed under the sham SPA fraudulent Usha had prepared. Usha during cross-examination initially admitted that the payment mechanism was for a two-parts payment totaling up to RM60m:

> DATO': Now, Ms Usha, you have told this Court that the sale price was RM60 million split into two parts, yes?
>
> MARA: Yes.
>
> DATO': Ok. Now, leaving aside who is supposed to prepare the agreements, whether it's you or whether it's Jasim and Thevan or Thevan and Siva Kumar, whoever is supposed to prepare the RM40 million part of the agreement, isn't it correct that the property, the title to the property does not transfer to the new owner until the full purchase of RM60 million is paid?

[70] Keeping with her web of self-contradictions and lies, Usha also suddenly contradicted herself and kept insisting to lie before this court that Jasim was in agreement to whatever price that was stated in the sham SPA Usha had prepared (being RM40m). Usha insisted on this lie despite testifying before this court that she had never sought for confirmation or verification of Jasim's supposed instruction from Jasim himself:

> DATO': Ok. So according to you, if he's committed to the RM40 million sale and purchase agreement, and according to you, under the terms of the RM40 million sale and purchase agreement, the property transfers on payment of RM40 million, yes?
>
> MARA: Yes.

[71] There was not even a spec of honesty or consistency in Usha's testimony. The sale price was somehow both RM60m and RM40m. It was neither here nor there. It was whatever it could be as and when it benefits Usha's web of fraud and breach of fiduciary duties.

D(ii) Thevan's obvious lies and contradictions in his testimony before this court

[72] As Thevan was also a prominent persona in the tripartite fraud, it was not at all surprising that Thevan was also in sync with fraudulent Usha's web of lies and self-contradictions. Just like Usha had done, Thevan was also willing to stoop so low so as to lie despite his own written documents and admissions were totally in contradiction to the fraudulent narrative he was trying to paint.

[73] Just as fraudulent Usha seemed flustered and confused with her stance on the 'agreed' purchase price for the subject land, Thevan also fluctuated

between admitting that the negotiated purchase price to be RM60m and at other times RM40m. This telling contradiction was astutely highlighted by the learned counsel for Firwas.

[74] Twice in fraudulent Thevan's amended defence to counterclaim and also his amended witness statement, Thevan insisted that the negotiated purchase price had always been RM40m. Thevan went as far as try to conceal and deny the existence of the Undated Undertaking and the dated undertaking that he himself had prepared and signed to suggest a mechanism to Firwas for the payment of the third tranche of RM20m (totalling up to RM60m).

[75] Thevan first lied in his own amended defence to counterclaim, inter alia, in paras 7, 15, 16, and 17 by insisting that the purchase price negotiated and agreed had always been RM40m:

> 7. SIVA KUMAR at the time of the signing the said TR paid the earnest deposit amounting to RM1.2 million being 3% of the agreed purchased price of RM40 million to THEVAN
>
> ...
>
> 15. Somewhere early in February 2018, THEVAN had secured a buyer for the said LAND. The proposed price for the Sale was RM40 million and prior to entering into any transaction, FIRWAS was consulted and FIRWAS had agreed to sell the said Land for RM40 million. This agreement to sell the said Land at RM40 million by FIRWAS was communicated to THEVAN by JASIM.
>
> 16. THEVAN had prepared the document titled Temporary Receipt (For Sale) on 5.2.2018 ('said TR') and this document was signed by JASIM on behalf of FIRWAS, confirming that the said Sale of the said Land was RM40 million only.
>
> 17. JASIM had signed the TR as the Director of FIRWAS was confirming the said Sale of the said Land to SIVA KUMAR and his nominees was for RM40 million only.

[76] Thevan echoed the same lie in regarding the alleged RM40m purchase price in his own amended witness statement. In fraudulent Thevan's witness statement, Thevan testified that Firwas or Jasim had never written to any party to confirm that the sale price was to be RM60m. This lie Thevan testified despite his own written and signed documents admitting that there were three tranches payment totalling up to RM60m. This lie Thevan proffered despite his own confirmation and communications directly with Jasim that the three tranches payment shall total up to RM60m:

> Q15: What do you have to say to the allegation made by FIRWAS and Jasim that the sale of the said Plentong Land was supposed to be RM60 mil?
>
> A: The allegation is false, as I mentioned above, the agreed selling price of the said Plentong Land was RM40 mil and this can be seen vide the said TR and said Letter dated 16.03.2018. Jasim being Director of FIRWAS signed to confirm that the

selling price for the said Plentong Land was RM40 mil. This is an afterthought excuse made up now by Jasim and FIRWAS for purposes of not honoring the agreed sale of the said Plentong Land to Siva Kumar & AMMSA. Further, the perusal of all draft sale and purchase agreement in the Common Bundle of Documents also confirms that the sale of the said Plentong Land was RM40 mil.

[77] Fraudulent Thevan's lie was then aptly dismantled during cross-examination when Thevan no longer had any excuse or room to deny the real truth of the matter in that he had lied and that he had all this while admitted and acknowledged that the purchase price negotiated was RM60m. Against his own pleaded case and witness statement tendered, Thevan thoroughly and completely contradicted himself and admitted that the RM1.2m earnest deposit Thevan had collected from Siva was to secure the purchase price of RM60m and not RM40m as Thevan had incessantly lied *ad nauseam* in his own pleading and witness statement:

DATO': Alright. So, let's be clear about one thing before we look at the mechanism. Let's be clear about one thing. When he issued the RM1.2 million cheque, it was earnest deposit for an offer if RM60 million?

THEVAN: The earnest was, yes, for RM60 million.

...

DATO': Now you told this Court this morning or early in the afternoon that the RM1.2 million that you received on the 26th of January and which is showed to my clients was the earnest deposit for an offer of RM60 million.

THEVAN: It's to show the seriousness of the buyer.

DATO': No, it was for, with all that aside, it was for a, it was to secure the, it was an earnest deposit secure an offer at RM60 million. Yes?

THEVAN: That's correct.

[78] It was apparent that fraudulent Thevan would not hesitate to hit below the belt and lie to this court as and when Thevan seeks to vindicate himself. This court was very well aware that Thevan then had to 'shift' his lie and later testified another version of deception in that Firwas originally insisted on RM60m price and later reduced the price to RM40m out of 'desperation'. Thevan was already caught in his first web of lies and there was nothing compelling at all for this court to now believe whatever false narratives Thevan was desperately trying to concoct. Besides, Thevan's testimony on Firwas's desperation was never pleaded by Thevan. Thus, fraudulent Thevan's lies and deception not only seen him stoop so low that Thevan contradicted his own pleaded case, but also see him desperately raising unpleaded facts.

D(iii) Siva's obvious lies and contradictions in his testimony before this court

[79] Siva's role in the tripartite fraud came to a clear revelation especially during Siva's thorough dismantling during cross-examination. In the same deceptive fashion, even Siva was desperately trying to delude this court to believe that Firwas had always agreed to the price of RM40m stipulated under the sham SPA that Firwas had never signed. This was despite Siva's own written WhatsApp evidence that the purchase price was for RM60m. When examined on this admission, Siva had demeaned himself so low to the extent that he defies his own image of a 'businessman' in that *SIVA COULD NOT EVEN (OR SIMPLY REFUSED TO) DO SIMPLE MATHEMATICS*.

[80] In Siva's own WhatsApp conversation with Thevan, Siva himself expressed that he was not keen that he would end up paying *RM80m* as he had to pay an *additional RM20m from the sale of of Siva's PJ lands*. Simple mathematics would clearly dictate that RM80m subtracted with the additional RM20m *WOULD LEAVE A TOTAL OF RM60m AND NOT RM40m*. Thus, it was in Siva's own written evidence that he understood clearly and undoubtedly that the purchase price was RM60m and not RM40m stipulated in the sham SPA Siva was trying to insist upon Firwas:

> DATO': He says, 'The offer letter is not what I proposed. Looks like I am selling my PJ land and paying an additional RM20 million, so my cost for the land is RM80 million'. Yes, you see that?
>
> SIVA: Yes.
>
> ...
>
> DATO': No. You are a very wealthy man but you will be able to subtract 20 from 80 and it does leave you —
>
> SIVA: I can't hear you.
>
> DATO': You know how to subtract RM20 million from RM80 million and that would make the offer RM60 million. Correct?
>
> SIVA: No.

[81] Further unravelling Siva's lies, Siva himself has exhibited both the temporary receipt *TOGETHER WITH THE DATED UNDERTAKING* in his affidavit to prove his interest over the subject land in Firwas's application to remove Siva's caveat ('caveat proceedings'). In exh SK1 of Siva's affidavit, Siva defined the temporary receipt together with the dated undertaking as 'Option to Purchase'. The fact that Siva was more than willing to adopt the dated undertaking as the truth in his sworn affidavit was incredibly telling that: (1) Siva had full knowledge of the third tranche payment by sale of his properties; and (2) Siva admits that there was a further RM20m that must be paid on top of the RM40m stipulated under the temporary license. Thus, on the same authority of *Ho Yau Hong* and *Boustead Trading* mentioned above, this court finds that fraudulent Siva ought to be estopped from insisting on the RM40m price mentioned in the sham SPA.

[82] Apart from failing or refusing to do simple mathematics, Siva also went to the extent of defying plain logic and common sense. This court was also aware that one of the 'alternative' narratives that Siva was concocting was that he was not 'involved' or 'aware' of Thevan's dealing for the third tranche of the RM60m and that this third tranche payment was a personal dealing between Jasim and Thevan. Typical of fraudsters, when the house of cards falls, the fraudsters will not hesitate to throw each other under the bus. Now, Siva blamed Thevan for 'underhanded' dealings to earn 'secret profit' from the sale of the subject land.

[83] However, this narrative proffered by fraudulent Siva defies plain logic and basic business acumen. This was simply because, the third tranche payment negotiated was supposed to be funded *FROM THE SALE OF SIVA'S OWN PROPERTIE*S. This very fact blew Siva's narrative wide open for the simple reasons that:

(a) it does not make any logic or sense that Siva was 'not involved' in the third tranche dealing considering the contra properties at stake were Siva's own properties. Siva must have known and must have proposed to Thevan to put Siva's properties as part of his bargaining chip; and

(b) it does not make any logic or sense that Siva would be willing sacrifice his own contra properties so as to allow Thevan to benefit from the 'personal trade' Thevan allegedly had with Jasim. It simply does not make any sense for Thevan to solely earn from the sale of Siva's (NOT THEVAN's) properties.

[84] It was overwhelmingly clear to this court the fraudulent trio, Thevan, Usha, and the second plaintiff-Siva had consistently exhibited the demeanour of an untruthful, evasive, deflective, and deceptive witnesses totally devoid of any credibility. It is trite law that oral testimonies must always be tested against contemporaneous documentary evidence tendered into court (see Gopal Sri Ram JCA (as His Lordship then was) in the Court of Appeal case of *Lee Ing Chin @ Lee Teck Seng & Ors v Gan Yook Chin & Anor* [2003] 2 MLJ 97):

> A judge who is required to adjudicate upon a dispute must arrive at his decision on an issue of fact by assessing, weighing and, for good reasons, either accepting or rejecting the whole or any part of the evidence placed before him. He must, when deciding whether to accept or to reject the evidence of a witness, test it against relevant criteria. *Thus, he must take into account the presence or absence of any motive that a witness may have in giving his evidence. If there are contemporary documents, then he must test the oral evidence of a witness against these. He must also test the evidence of a particular witness against the probabilities of the case.* A trier of fact who makes findings based purely upon the demeanour of a witness without undertaking a critical analysis of that witness' evidence runs the risk of having his findings corrected on appeal. It does not matter whether the issue for decision is one that arises in a civil or criminal case: the approach to judicial appreciation of evidence is

A the same. There are a number of important and leading cases in which the point has been considered

[85] In the present case the fraudulent trio had obvious motives to lie and delude this court as their respective positions were also at stake. And as this B court has demonstrated at long length above, even the fraudulent trio's own documentary evidence was totally contradictory to the fraudulent trio's oral testimonies.

C **[86]** And considering that the fraudulent trio for more than one occasion had brazenly lied before this court, it is only just and proper that this court finds that fraudulent Thevan, fraudulent Usha, and fraudulent Siva to be unreliable witnesses (see Thompson LP in *Khoon Chye Hin v Public Prosecutor* [1961] 1 MLJ 105b):

D If a witness *demonstrably tells lies on one or two points then it is clear that he is not a reliable witness* and as a matter of prudence the rest of his evidence *must be scrutinised with great care and indeed with suspicion*.

E. WHETHER OR NOT SIVA CAN 'INNOCENTLY' RELY ON THE E OSTENSIBLE AUTHORITY OF FRAUDULENT THEVAN, AND FRAUDULENT USHA TO FALSELY COMMIT FIRWAS TO THE SHAM SPA PREPARED BY USHA

[87] As this court have already deliberated at length above, *there was* F *absolutely nothing innocent about Siva* in his supposed innocent reliance on the agency of his co-conspirators Thevan and Usha. Siva did not just rely on Thevan and Usha but had already went to the extent of colluding and conspiring with them as the fraudulent trio. The initial agency of Thevan and Usha (to Firwas) was not 'relied upon' but was menacingly abused and G manipulated by Siva, Thevan, and Usha.

[88] Thus, any spec of agency Thevan and Usha might have had with Firwas had effectively been eviscerated the very moment Thevan and Usha went rogue and began to turn the wheels of fraud by acting on behalf of Firwas without due H authorisation and instruction by Firwas. Although generally a principal would be bound by the acts of his agents, but the same principle shall not apply when the agents had maliciously acted in excess of the agents' scope of authority. Hence, since Thevan and Usha were both instrumental in maliciously concocting Firwas's fraudulent acceptance of the sham SPA without Firwas's I instruction and authorisation, Firwas clearly cannot be forced to commit to the sham SPA. Even if this court were to find that there existed an agent-principal relationship between Thevan, Usha, and Firwas, that agency had long ceased even before Usha had in bad faith 'accepted' the sham SPA at the instruction of Thevan (see the decision of the Court of Appeal in *Ooi Meng Khin v Amanah*

Scotts Properties (KL) Sdn Bhd [2014] 6 MLJ 488):

> [60] *The applicability* of *the Turquand's rule is fully circumscribed, in that it is only applicable in aid of a person who deals with a company in good faith.* It is a rule so prescribed to protect the innocent party doing bona fide business with a company. *It has been noted that even if the party who seeks to avail himself of this rule in his favour, does not have actual knowledge that an irregularity has happened, that party* will still *be precluded from availing himself* if the *circumstances were such as to put him on inquiry he failed to make*. Sometimes, the very nature of the proposed transaction may put a party on inquiry, even if he has no special relationship with the company (see *Walter Woon on Company Law* (3rd Ed) at pp 80–100) (Emphasis added.) What has also become clear as well is that this: Turquand's rule does not apply in a case where forgery is involved ...

[89] In any case, it would be severely unjust if this court were to subscribe to any rule of law to commit Firwas to the sham SPA when it was well established and proven that the sham SPA existed purely by the malicious concoction of concerted fraud by the very same co-conspirators who spearheaded the fraudulent scheme. At no point in time does this court intend to be an instrument of fraud and give any effect on anything that was created via the fraudulent trio's scheme.

[90] Thus, this court hereby finds that Siva cannot contend that he had innocently relied upon the agent-principal relationship between Thevan, Usha, and Firwas as the same fraudulent trio had acted in bad faith. Nothing in their conduct ever reflected even a spec of good faith. There had not been any representations made by Firwas to reasonably lead Siva into 'believing' that Thevan and Usha both had 'accepted' the sham SPA on behalf of Firwas. This was obviously clear considering that the fraudulent trio had full knowledge of the ceasing of negotiations and the prior sale to Eastern Titan well before any 'acceptance' took place by Firwas (which there was never any acceptance).

F. WHETHER OR NOT FIRWAS WAS BOUND TO THE TERMS OF THE SHAM SPA WHICH IT HAD NEVER SIGNED OR EVER AGREED TO

[91] Following this court's findings in the first three issues above, it should naturally and logically follow that this court answers this fourth issue *in the negative*. Firwas clearly were never bound to commit to the sham SPA that had been fraudulently concocted by the fraudulent trio, Thevan, Usha, and even Siva.

[92] Breathing any life or legitimacy to any of the tripartite fraud would be a severe affront to sheer justice, the law, and equity. The fraudulent trio had sought for the long arms of the law with thoroughly soiled and dirty hands.

There should be no feasible reason, factual or legal, that should incentivise this court to enforce the sham SPA upon the innocent Firwas. This rings especially so considering the sham SPA was also prepared by a fraud who led Firwas to believe that she was a qualified lawyer. It would be profoundly wrong for this court to allow this tripartite fraud to be perpetrated any further.

[93] This court finds guidance in Gopal Sri Ram JCA's (as His Lordship then was) decision in the Court of Appeal case of *Sri Kelangkota-Rakan Engineering JV Sdn Bhd & Ors v Arab-Malaysian Prima Realty Sdn Bhd & Ors* [2001] 1 MLJ 324 in which His Lordship explained:

> Parties to a transaction may disguise its true nature and purport by whatever means available to them. Yet, *the court will tear away the disguise and reveal to the world at large the true arrangement* arrived at between the parties. It is important for reasons of public policy that the court seised of this power. *Were it not so, the law would be lending its aid to enforce pretended and not real obligations*.

[94] This court cannot sit idly by and become the wheels that put the tripartite fraud (perpetrated by the second plaintiff Siva himself with Thevan and Usha) into motion. It is the court's solemn duty to ensure that no fraud shall see any light of legality or enforcement and to stifle all fraud at any time of the proceedings. Suffice that this court refers to the Federal Court decision in *Merong Mahawangsa Sdn Bhd & Anor v Dato' Shazryl Eskay bin Abdullah* [2015] 5 MLJ 619:

> *It is very well settled that the courts take judicial notice of such illegality and refuse to enforce the contract,* and such judicial notice may be taken at any stage, either at the court of first instance or at the appellate stage irrespective of whether illegality is pleaded or not where the contract is ex facie illegal.
>
> ...
>
> In that regard, we endorse the following statement of law by the Court of Appeal per Hamid Sultan JCA, delivering the judgment of the court, in *China Road & Bridge Corp & Anor v DCX Technologies Sdn Bhd and another appeal* [2014] 5 MLJ 1**:**
>
> > *At the outset we must say that the trial courts must be vigilant not to provide any relief on contracts which is void on the grounds of public policy, or illegality ... whether or not it is the pleaded case of the parties or whether the issue was raised during the trial.*

[95] There was never any binding agreement to begin with. Even if there was, the sham SPA insisted upon by the fraudulent trio was borne out of the fraudulent scheme concocted by the fraudulent trio and thus, was illegal, void *ab initio* and was certainly unenforceable.

G. WHETHER OR NOT FRAUDULENT SIVA, FRAUDULENT THEVAN, AND FRAUDULENT USHA (AND HER FRAUDULENT FIRM) HAD ALL COLLUDED IN A CONCERTED TRI-PARTITE SCHEME TO FRAUDULENTLY FORCE FIRWAS TO COMMIT TO THE SHAM SPA

[96] This court has at long lengths deliberated on the machinations of the tripartite fraud which was perpetrated by the trio of conspirators, Thevan, Usha, and Siva. It is opportune at this juncture for this court to be minded of the law underlying the tort of fraud, and conspiracy to defraud. Suffice that this court refers to the case of *Yap Sau Choon @ Yap Bee Yong & Anor v Cheong Hong Mun & Ors* [2016] MLJU 1203 (in which the High Court had aptly collated the law relating to fraud and conspiracy). The relevant portions of the precedent are reproduced here:

> [23] This court lauds the learned counsel for the plaintiffs for encapsulating and collating the law on the determining elements of the existence of a fraud. In reference to the case of *CIMB Bank Bhd v Abdul Rafi a/l Abdul Rajak & Ors* [2012] MLJU 884, the pertinent factors or elements in determining the existence of fraud are as follows:
>
> (a) Existence of fraud is a question of fact and the range of fraud is ad infinitum per the infinite facts
>
> (b) *The fraud must be an actual fraud. And actual fraud is defined as:*
>
> (i) 'dishonesty of some sort where the designed object of a transfer is to cheat a person of an existing right'; or
>
> (ii) 'whether by a deliberate and dishonest act, a person is deprived of his existing right'
>
> [24] It is already well settled by the recent Federal Court's decision in the case of *Sinnaiyah & Sons Sdn Bhd v Damai Setia Sdn Bhd* [2015] 5 MLJ 1 (FC) that the burden of proof for a case of civil fraud is *no longer beyond reasonable doubt, but is now based on the balance of probabilities*.
>
> [25] Now the learned counsel for D4 has fairly and rightfully warned this court against supposing a finding of fraud on mere suspicion and conjecture. This court takes heed from this warning. However, even with that said, there is no law that suggests that in the absence of a direct evidence of fraud, that this court cannot draw an inference from all facts of the case to make a finding of a fraud. In fact, it is this court's ardent duty and right to take in, analyse, and draw an inference out of the facts and evidence tendered into court. This is a case of fraud, a state of dishonest intent, thus it would be preposterous to assume that any fraudster, would out of his own volition, make it known to the world in direct evidence that he has intended to commit such fraud. This court finds valuable guidance from the Indian Privy Council decision in the case of *Satis Chandra Chatterji v Satish Kantha* AIR 1923 PC 73 in which the Privy Council has held:
>
> Charges of fraud and collusion … must, no doubt, be proved by established facts

A or *inferences legitimately drawn from those facts taken together as a whole.* Suspicions and surmises and conjecture are not permissible substitutes for those facts or those inferences, *but that by no means requires that every puzzling artifice or contrivance resorted to by one accused of fraud must necessarily be completely found against him. If this were not so, many a clever and dexterous knave* B *would escape.*

Referring to a decision closer to our local chapter, the English Court of Appeal in the case of *Dadourian Group International Inc and other v Simms and other* [2009] All ER (D) 175 (Mar) has held that:

C Mr Cakebread appeared to be equating proper inferences with conjecture and assumption. At times he came close to suggesting that fraud can only be established where there is direct evidence. *If that were the case, few allegations of fraud would ever come to trial. Fraudsters rarely sit down and reduce their dishonest agreement to writing. Frauds are commonly proved on the basis of inviting the fact-finder to draw proper inferences from the primary facts.* That is exactly what the D judge did here.'

THE ELEMENTS AND LAW OF CONSPIRACY TO FRAUD AND CONSPIRACY TO INJURE

[27] The elements to prove a case of a tort of conspiracy are namely:

E (i) an agreement between two or more persons;

(ii) an agreement to injure the plaintiff

(iii) acts done in execution of the agreement resulted in damage to the plaintiff

F *See SCK Group Bhd & Anor v Sunny Liew Siew Pang & Anor* [2011] 4 MLJ 393 (CA); *Yap JH v Tan Sri Loh Boon Siew & Ors* [1991] 3 CLJ 2960.

[28] With regards to the element of an 'agreement' it is already a well settled law that the agreement between conspirators need not even be proven by direct evidence. An agreement can be inferred from the culmination and analysis of facts so long as the G facts indicate and infer a common intent and machination of fraud by the fraudsters. Such conspiracy may be derivative of an analysis of circumstantial evidence. In simpler terms, such conspiracy may be founded on an inference from facts, not necessarily an agreement per se.

[29] This court is guided by Gopal Sri Ram JCA's (as he then was) decision on behalf H of the Court of Appeal in the case of *MGG Pillai v Tan Sri Dato Vincent Tan Chee Yioun & Other appeals* [1995] 2 MLJ 493. Gopal Sri Ram JCA (as he then was)*:*

Conspiracy is a tort that is not always capable of proof by direct evidence. Like so many other facts, an agreement to do an unlawful act by unlawful means may be established *by evidence of circumstance*s from which such an agreement *may be* I *inferred*. It is axiomatic that there must be proof and not mere conjecture. In the present case there was sufficient evidence which conspiracy *could be properly inferred.*

[97] To this court's mind, fraudsters Thevan, Usha, and Siva were all

fraudsters in their own respective rights and were conspirators in a tort of conspiracy. There are four salient elements that would make up the cause of action of fraud (see *Radiant Splendour Sdn Bhd & Ors v Dato' Seri Mohd Najib bin Tun Abdul Razak & Ors* [2020] MLJU 961):

> [110] The elements of fraud to an extent coincide with the elements of conspiracy. As per the case of *Letchumanan Chettiar Alagappan @ L Allagappan (as executor to SL Alameloo Achi alias Sona Lena Alamelo Acho, deceased) & Anor v Secure Plantation Sdn Bhd* [2017] 4 MLJ 697 and the case of *Hock Hua Bank (Sabah) Bhd v Lam Tat Ming & Ors* [1995] 4 MLJ 328, the elements to prove fraud are as follows:
>
> (a) a willful act;
>
> (b) with the intent to deprive another of his lawful entitlement;
>
> (c) brought forth vide illegal or inequitable means; and
>
> (d) had caused damage and losses

[98] This court believes that the deliberation on the facts above was more than sufficient to reveal the fraudulent designs of the fraudulent trio. Suffice that this court briefly alludes to each of the trio's fraudulent design. Thevan had full intention to unlawfully reap monetary gains from agency fees from his intended brokerage of Firwas's subject land.

Thevan's fraud (and role as co-conspirator) against Firwas

[99] Thevan had wilfully acted on his own accord to abuse the personal relations he shared with Irene and Jasim. He had introduced Firwas to the fraudulent Usha with full knowledge that fraudulent Usha was not a qualified lawyer and was a fraudulent knave who had a knack for lies and deception. Thevan had full knowledge of the failure and ceasing of negotiations. Thevan also had full knowledge of the sale of the subject land to Eastern Titan. Despite knowing of these truths, Thevan perpetrated an insidious deceit to force Firwas to suffer losses by falsely committing Firwas to the sham SPA. Thevan had done so by deceitfully and fraudulently instructing Usha to 'accept' the sham SPA on behalf of Firwas despite having clear confirmation of failure of negotiation and full knowledge of the prior sale to Eastern Titan. Thevan instructed as such despite knowing that he had no instructions whatsoever by Firwas to proceed with the sham SPA. Thevan then lied before this court insisting that the purchase price for the subject land was for RM40m despite his own documentary admission that the negotiated price was RM60m.

Usha's fraud (and role as co-conspirator) against Firwas

[100] Usha had wilfully acted on her own accord to abuse the trust placed by Firwas on her as a fiduciary. She had gained Firwas's trust by deceitful means and misrepresenting her qualification as a lawyer (which in truth were all

blatant lies and forgeries). Usha had full knowledge that she was fraudulently practicing as a lawyer and had abused the legal qualifications of other qualified lawyers as a disguise to conceal her fraudulent practice. Throughout Usha's fraudulent service to Firwas, Usha had consistently refused to honestly reflect the RM60m purchase price in any of her draft sham SPAs despite being instructed time and time again to amend her draft sham SPAs by Firwas.

[101] Usha had full knowledge of the failure and ceasing of negotiations and had by her own written email confirmed the abortion of negotiations with Siva. Usha also had full knowledge of the sale of the subject land to Eastern Titan. Despite knowing of these truths, Usha perpetrated an insidious deceit to force Firwas to suffer losses by falsely committing Firwas to the sham SPA that she prepared. Usha had done so by deceitfully and fraudulently following Thevan's instruction to 'accept' the sham SPA on behalf of Firwas despite having clear confirmation of failure of negotiation and full knowledge of the sale to Eastern Titan. Usha had followed Thevan's instruction despite knowing that she had no instructions whatsoever by Firwas to proceed with the sham SPA. Usha then deceitfully informed Siva's lawyer that Firwas had approved her sham SPA despite having full knowledge that Firwas had rejected all of her draft sham SPAs.

[102] Usha had also admitted to committing forgery and perjury by falsifying her firm's bank account statement to reflect the supposed RM4.8m further deposit paid by Siva under the sham SPA. Usha had actively conducted herself in brazen deceit to ensure that Firwas was fraudulently forced to commit to the sham SPA even after she knew that Firwas had already aborted all dealings with Siva.

Siva's fraud (and role as co-conspirator) against Firwas

[103] Siva had wilfully acted on his own accord to abuse the former agent-principal relations between Firwas (as principal), Thevan, and Usha (as fraudulent agents). Siva had lied before this court and had attempted to feign innocence that he had no knowledge of the sale to Eastern Titan before signing the sham SPA prepared by Usha. In truth, Siva had full knowledge of the prior sale of the subject land to Eastern Titan. Despite knowing of these truths, Siva perpetrated an insidious fraud to force Firwas to suffer losses by falsely committing Firwas to the sham SPA. Siva had done so by deceitfully and fraudulently signing the sham SPA despite having clear confirmation of failure of negotiation and having full knowledge of the prior sale to Eastern Titan. Siva had attempted to feign innocence despite clear evidences that Siva had had close and direct communications with both fraudulent Thevan, and fraudulent Usha.

[104] Siva then lied before this court insisting that the purchase price for the subject land was for RM40m despite his own documentary admission (and sworn affidavit) that the negotiated price was RM60m. Siva further cemented his fraud by wrongfully lodging his caveat upon the subject land despite having full knowledge that his supposed 'interest' upon the subject land was a sham concocted *vide* the tripartite fraud.

[105] From the above, it was apparent to this court that the fraudulent trio Thevan, Usha, and Siva had committed fraud of their own respective brand and make. Acting as individuals they were clearly fraudsters. On the other hand, as co-conspirators acting in concert with each other, it was also sublimely apparent to this court that each of the fraudulent trio played their respective roles in order to realize their common conspiracy to defraud Firwas (in falsely forcing Firwas to commit to the sham SPA Firwas had never agreed to or even signed). As a result of their common conspiracy, Firwas had suffered grave losses as they run the risk of losing the subject land at a RM20m loss, or at the very least incur massive losses in payment delays as Firwas was hindered from properly performing its bargain in Firwas's Agreement with Eastern Titan.

[106] The aforementioned considered, this court hereby finds that the second plaintiff-Siva, fraudulent Thevan, and fraudulent Usha had all committed the tort of fraud and were also complicit in the conspiracy to defraud Firwas.

H. DECISION ON THE PLAINTIFFS' SHAM MAIN CLAIM AND THEVAN'S FRAUDULENT COUNTERCLAIM

[107] All of the aforementioned findings and deliberations *in extenso* considered, this court hereby *DISMISSES THE PLAINTIFFS' SHAM MAIN CLAIM (SIVA'S CLAIM)*. This court also finds that Thevan's counterclaim was also a total sham and hereby *DISMISSES THEVAN'S SHAM COUNTERCLAIM*.

I. DECISION ON FIRWAS'S COUNTERCLAIM FOR DAMAGES AND REMOVAL OF SIVA'S WRONGFUL CAVEAT

[108] It was plain and obvious to this court that Siva's wrongful lodgement of his caveat was part and parcel of the tripartite fraud concocted by the fraudulent trio (including Siva). It is altogether obvious to see that the lodgement of the caveat was done in overt bad faith to unlawfully deprive Firwas of its ardent right to deal with the subject land as it sees fit. It is a statutory feature within s 329 of the National Land Code that any party who had wrongfully entered a caveat upon a land *'SHALL BE LIABLE TO PAY COMPENSATION'*.

[109] As to the measure of damages payable by Siva, this court finds that the foreseeable loss was clearly the *years of deprivation of the balance purchase price by Eastern Titan that was hindered by Siva's (and the fraudulent trio's) fraud.* This was especially foreseeable considering Thevan, Usha, and even Siva all had full prior knowledge of the sale of the subject land to Eastern Titan. It is trite that delays in payment of the balance purchase price would indeed cause the deprivation of use or opportunity to use the balance purchase price which have already fallen due but-for Siva's fraud and conspiracy. If not for Siva's fraud and conspiracy, the balance purchase price would have been fully paid to Firwas *more than three years ago*. Thereby, at the very base level of commercial earnings, *Firwas was deprived of the opportunity to earn interest on the RM52.2m for more than three years*. This would be the lowest foreseeable denominator of opportunity loss caused by Siva's fraudulent hindrance. Thus, if there were no other proof or evidence of a higher denominator of loss, it shall only be appropriate that this court to at the very least award damages to Firwas for its loss of opportunity to earn interest on the balance purchase price (see *MD Biomedical Engineering (M) Sdn Bhd v Goh Yong Khai* [2021] 5 MLJ 408 (CA); *Mah Siew Seng & Anor (both as administrators of the estate of Mah Khin Kee (the deceased)) v Seema Development Sdn Bhd* [2014] 7 MLJ 372; *Ting Sieh Chung v Hock Peng Realty Sdn Bhd* [2013] 2 MLJ 90).

[110] The precedents by and large indicated that an interest of 8%pa was the industry standard for deprivation of the opportunity to earn interest on sums of which payment had been delayed. At least in the present case, witnesses from Eastern Titan, Firwas, *AND SIVA HIMSELF* all *agreed that the industry standard measure for damages for deprivation of use of monies was 8%pa*. Siva himself had testified during cross-examination that in another case he was embroiled in for his property in the Mines, that the rate of 8%pa is 'normally used' in measuring damages for delayed payments. Adding further propriety to the rate of 8%pa, was the fact that cl 4.2 of the sham SPA that Siva himself had attempted to force upon Firwas also stipulated a rate of 8%pa for delayed payments. This certainly reflects the commonly agreed standard interest rate applicable for delayed payments (at the very least within this case) to be 8 %pa.

[111] Firwas had earnestly informed this court that had the sale with Eastern Titan went undisturbed by Siva and his co-conspirators, *Eastern Titan would have to contractually settle the entire purchase price by 22 September 2020* ('accrual date')

[112] Thus, this court hereby awards damages ('judgment sum') to Firwas calculable or assessable in the following manner:

> Rate of 8% per annum x RM52,200,000 for the entire period from the accrual date (22 September 2020) until one month after the full removal of Siva's wrongful caveat = ('judgment sum')

[113] This court is minded that it cannot extend the interest period to the time of full settlement by Eastern Titan, as the payment from Eastern Titan was beyond Siva's control. On the other hand, the removal of Siva's wrongful caveat is well within Siva's control. Thus, the cut off time for the interest period shall reasonably be one month after the removal of Siva's wrongful caveat. This is especially so considering Eastern Titan's contractual deadline for full settlement was 22 September 2020 and thus, Eastern Titan should presumably be able to fully settle the balance purchase price soon after the removal of Siva's wrongful caveat.

[114] Hypothetically or notionally speaking, if Siva was able to remove his caveat on 31 December 2023, then the interest period from the accrual date until the notional cut-off date (being 31 January 2024) would be three years four months and nine days. The rate of 8%pa upon RM52.2m would be RM4,176,000 per year (RM348,000 per month OR RM11,441.10 per day). Thus, the total notional general damages payable would be RM11,441.10 x 3 years 3 months and 9 days (or 1,226 days) amounting to *RM14,026,783.56*. This would be the sum of general damages payable by Siva in the circumstance that Siva removes his wrongful caveat by 31 December 2023. The amount should accordingly increase following the actual interest period that ran between the accrual date and the cut-off date.

I(i) Thevan's joint liability as fraudulent co-conspirator

[115] Accordingly, as the wrongful entry of the caveat was only one part of the entire fraudulent conspiracy concocted by Thevan, Usha, and Siva, *Thevan shall also be jointly and severally liable to pay the same judgment sum (as calculable above)*.

[116] It is trite law that co-conspirators within a conspiracy are considered to be joint tortfeasors and thus each of the conspirator shall be jointly and severally liable to the fraud and conspiracy. Suffice that this court refers to the Court of Appeal decision in *Lai Soon Onn v Chew Fei Meng and other appeals* [2019] 2 MLJ 96:

> [68] *It is trite law that where there are two or more persons liable for the tort of conspiracy, and where the liability of each person is joint and several*, a plaintiff is entitled to sue whomsoever that he wishes (see the Court of Appeal of Singapore case of *Chan Kern Miang v Kea Resources Pte Ltd* [1998] 2 SLR (R) 85 at p 91). This is fortified by O 15 r 4(3) of the Rules of Court 2012 which states:
>
> > Where relief is claimed in an action against a defendant who is jointly liable with some other person and also severally liable, that other person need not be made a defendant to the action; but where persons are jointly, but not severally, liable under a contract and relief is claimed against some but not all of those persons in action in respect of that contract, the court may, on the application of any

defendant to the action, by order stay the proceedings in the action until the other persons so liable are added as defendants.

I(ii) Thevan's and Shoba's liability for breach of fiduciary duty

[117] In the alternative, if this court were wrong on its endeavour into the law of fraud and conspiracy, *it would still remain resoundingly clear that the same facts and mechanism of fraud and conspiracy deliberated above ALSO SUFFICIENTLY PROVES FIRWAS'S PLEADED CASE OF BREACH OF FIDUCIARY DUTY*.

[118] In truth, apart from Thevan and Shoba (who were made parties in Firwas's counterclaim) it was astoundingly obvious to this court that *USHA WAS ALSO CENTRAL TO THE FRAUD AND CONSPIRACY*. Usha was also the appointed fiduciary of Firwas when Firwas was fraudulently misrepresented of Usha's forged qualifications as a lawyer. Had Usha been made a party to the present case, this court would have had the discretion and authority to direct that fraudulent Usha to be jointly and severally liable to the fraud and conspiracy, and at the very least be liable for the breach of her fiduciary duty owed to Firwas. Despite the fact that Usha was a fraudulent unqualified lawyer, Firwas had appointed Usha in the misrepresented belief that Usha was a qualified lawyer. Thus, notwithstanding Usha's clearly forged qualifications, Usha still stood as a person in a fiduciary position to Firwas.

[119] Unfortunately, before this court, Usha was not made a party to the main suit or Firwas's counterclaim. Nonetheless, considering Usha's glaring complicity and involvement in the fraud (and breach of fiduciary duty), it would be severely remiss if this court does not take judicial notice that Usha was indeed involved in the fraud and conspiracy, and had clearly breached the fiduciary duties she owed against Firwas. Although this court's hands are tied and cannot attach liability to Usha in the present case, this court shall leave it to Firwas's ingenuity and discretion to pursue an action against Usha in light of this court's findings in the present case.

[120] Notwithstanding, it was resolutely clear that Thevan (as Firwas's fraudulent property agent), and Shoba (as partner of Usha's fraudulent firm) all were in the position of a fiduciary to Firwas. They were in the position to safeguard Firwas's interest and to ensure that they act in the best interest and benefit of Firwas from the sale of the subject land (see *Bristol and West Building Society v Mothew* [1998] Ch 1; *Solid Investments Ltd v Alcatel-Lucent (M) Sdn Bhd (previously known as Alcatel Network Systems (M) Sdn Bhd)* [2014] 3 MLJ 785:

> *A fiduciary is someone who has undertaken to act for or on behalf of another in a particular matter in circumstances which give rise to a relationship of trust and*

confidence. The distinguishing obligation of a fiduciary is the obligation of loyalty. *The principal is entitled to the single-minded loyalty of his fiduciary. This core liability has several facets. A fiduciary must act in good faith; he must not make a profit out of his trust; he must not place himself in a position where his duty and his interest may conflict* he may not act for his own benefit or the benefit of a third person without the informed consent of his principal.

[121] Fraudulent Thevan had undertaken to act on behalf of Firwas as a property agent. Firwas had appointed Thevan in trust and confidence that Thevan would act in good faith to the best interest of Firwas. But it is sublimely apparent (as this court had unravelled at length) that Thevan had committed fraud of his own design, and was complicit in the tripartite conspiracy to defraud in order to reap monetary gains (in agency fees) from the fraudulent sale of the subject land to Siva.

[122] Shoba on the other hand, although having minimal involvement in the tripartite fraud, Shoba was still the partner of Usha's fraudulent firm at the material time the tripartite fraud all took place. Although it was unfortunate that the true fraudster Usha was not made party to the present case, the fact remained that Shoba as partner of Usha's fraudulent firm shall still be liable to the fraud and conspiracy that was perpetuated vide the fraudulent firm as a whole.

[123] This court is cognizant of the fact that Shoba perhaps might only have minimal involvement in the tripartite fraud or conspiracy. However, the law is resolute that Usha's fraudulent firm as a whole owed a fiduciary duty to Firwas. And as a partner of Usha's fraudulent firm (specifically at the material time of the tripartite fraud) Shoba shares the same liability as the firm notwithstanding the fact that a majority of the tripartite fraud was perpetuated by Usha.

[124] In any case, this case would serve as a keen reminder to the legal fraternity so as to not undertake the position and liability as a partner in a firm lightly. It has always been trite law that partners in a firm share joint and several liability of the firm notwithstanding the fact that the firm's liability might have been incurred by another partner within the firm. To be hailed as a legal firm's partner is not just a matter of prestige or accolade, but a serious and real matter of responsibility, liability, accountability, and most pertinently integrity. A partner is expected to be reasonably aware of the firm's affairs as a whole as all the partners' liability are on the line.

[125] Most relevant to Shoba's personal liability as partner would be s 12 of the Partnership Act 1961. The section reads:

12 Liability of firm for wrongs

Where, by *any wrongful act or omission of any partner acting in the ordinary course of*

the business of the firm or with the authority of his co-partners, *loss or injury is caused to any person not being a partner in the firm*, or any penalty is incurred, *the firm is liable therefor to the same extent as the partner so acting or omitting to act.*

[126] In view of the provision above, Shoba would be liable in the following manners:

(a) firstly, Shoba had by her own volition knowingly held out or allowed Usha to be held out as a lawyer in Usha's fraudulent firm despite having full knowledge that Usha was an unqualified person;

(b) secondly, Shoba had also by her own volition wrongfully allow herself to enable the fraudulent manner in which Usha had conducted her illegal 'practice' as an unqualified lawyer. Even if Shoba had no idea whatsoever of Usha's forged qualifications, Shoba had omitted to conduct proper due diligence to verify and investigate the obviously peculiar manner in which the fraudulent firm was primarily run, owned, and managed by fraudulent Usha; and

(c) thus, independent from Usha's role in the tripartite fraud, Shoba also had her own set of wrongs she had both committed and omitted in the ordinary course of the fraudulent firm's business.

[127] Meanwhile, it would be wrong for this court to assume that Shoba can be left unscathed merely because Usha was not a partner in Usha's fraudulent firm. It must be reminded that partners are not only bound to the act of other co-partners as agents to one another under s 7 of the Partnership Act 1961. Partners are also bound to the acts (executed in the name of the firm) of any person authorised by the firm even if that person was not a partner in the firm (see s 8 of the Partnership Act 1961):

8 Partners bound by acts on behalf of firm

An act or instrument relating to the business of the firm and *done or executed in the firm-name*, or in any other manner showing an intention to bind the firm, *by any person thereto authorized, whether a partner or not, is binding on the firm and all the partners*.

[128] Shoba had full knowledge of Usha's active involvement in managing the fraudulent firm's affairs and business. Shoba had not questioned Usha's active role in the fraudulent firm and thus, had directly authorized Usha to conduct the business of the firm in the fraudulent firm's name and authority. Thus, even if perhaps Shoba had minimal involvement in the tripartite fraud, it remains immutable that Shoba had full involvement in the fraudulent manner that Usha's fraudulent firm was managed. It is simply implausible that Shoba can insist that a land deal worth RM60m would go unnoticed right under her nose as a partner of the firm. In fact, Shoba had knowledge of Usha's dealings and

had in fact sent an email to Jasim on 28 June 2018 seeking for Firwas's instruction in view of the signed sham SPA and alleged further RM4.8m the fraudulent firm had allegedly received from Siva.

[129] Thus, although Shoba might not be primarily involved in the tripartite fraud, Shoba still had full knowledge of and had authorised Usha's fraudulent works under the banner and name of the fraudulent firm. Therefore, *this court finds that Shoba as a partner of the fraudulent firm (at the material time of the tripartite fraud) was clearly liable to the fraud, conspiracy and breach of fiduciary duty perpetrated under the name of the firm* (see *Guthrie Property Development Holding Bhd v Baharudin bin Hj Ali & Ors* [2011] 3 MLJ 416):

> [18] On the totality of the evidence, it is my finding that the firm was appointed by the plaintiff to act on its behalf in respect of the Bukit Jelutong project. It is clear from the exhibits tendered that the firm acts as the stakeholder in the terms of cl (h) of the second schedule to the sale and purchase agreement. On the same token, I am also satisfied that the sum of RM1,292,396.98 has been paid to the firm as stakeholder. It is evident that the plaintiff appointed the firm and not any particular solicitor in the firm as an individual to act as solicitors for the vendor. *The firm owes a duty to the plaintiff.* In *Dato' Seri Au Ba Chi v Malayan United Finance Bhd & Anor*; *Dato' Au Development Sdn Bhd v Malayan United Finance Bhd & Anor* [1989] 3 MLJ 434 the court held under headnote 5:
>
> > *Under the general law, the relationship of solicitor and client gave rise to a duty as a solicitor to exercise that care and skill on which he knew his client would rely, and to a duty not to injure his client by failing to do that which he had undertaken to do and, which, at the solicitor's invitation, the client had relied on him to do.*

[130] On a similar note, Thevan as a fiduciary of Firwas had also by his own fraudulent design and complicity in the tripartite fraud had clearly breached his fiduciary duty owed against Firwas. He had malicious motive to force Firwas to commit to the sham SPA so as to allow himself to fraudulently earn fees as Firwas's property agent. And Thevan had indeed acted in manners which were vastly injurious to Firwas's interests. Thus, even if this court were wrong regarding Thevan's liability for fraud and conspiracy, it remains unshakeable that Thevan (by the same conducts) had breached his fiduciary duty he owed against Firwas. Thevan's breaches of fiduciary duty are, inter alia, as follows:

(a) outright lying regarding the true purchase price that Firwas had always insisted upon being RM60m;

(b) Thevan by his fraudulent instruction had caused Siva's signing of the sham SPA at the lower price of RM40m which was never agreed to by Firwas;

(c) against Firwas's clear instruction to abort and cease negotiations with Siva, Thevan still instructed Usha to fraudulently approve the sham SPA on behalf of Firwas;

(d) Thevan concealed the fact of the sale to Eastern Titan from Siva's lawyer in order to falsely commit Firwas to the sham SPA prepared by Usha; and

(e) Thevan knowingly introduced fraudulent Usha as a qualified lawyer to Firwas despite the fact that Usha was a fraudster and an unqualified person.

[131] Considering that Thevan's and Shoba's breach of fiduciary duty laid the very foundation in which Siva had wrongfully lodged his caveat, then it was well within the realm of foreseeability that Thevan and Shoba was aware that their breach of fiduciary duty would directly hinder the performance (and delay payments) under the agreement between Eastern Titan and Firwas. This is especially foreseeable considering Thevan and the fraudulent firm clearly had prior knowledge of Firwas's agreement with Eastern Titan. This court hereby finds that Thevan, and Shoba shall be jointly and severally liable to the same extent and quantum of the judgment sum as Siva is also liable to for his wrongful entry of caveat upon the subject land.

I(iii) Examplary damages against Thevan, Siva, and the fraudulent firm

[132] As to Firwas's prayer for punitive (or exemplary) damages, the Court of Appeal decision in *Sambaga Valli a/p KR Ponnusamy v Datuk Bandar Kuala Lumpur & Ors and another appeal* [2018] 1 MLJ 784 is certainly instructive for this court's consideration:

> [32] Now, aggravated damages are classified as a species of compensatory damages, which are awarded as additional compensation where there has been intangible injury to the interest of personality of the plaintiff, *and where this injury has been caused or exacerbated by the exceptional conduct of the defendant.*
>
> [33] The exemplary damages or punitive damages — the two terms now regarded as interchangeable — are additional damages awarded with reference to the conduct of the defendant, *to signify disapproval, condemnation or denunciation of the defendant's tortious act, and to punish the defendant. Exemplary damages may be awarded where the defendant has acted with vindictiveness or malice, or where he has acted with a 'contumelious disregard' for the right to the plaintiff.* The primary purpose of an award of exemplary damages may be deterrent, or punitive and retributory, and the award may also have an important function in vindicating the rights of the plaintiff (see *Rookes v Barnard* [1964] 1 All ER 367; *AB and others v South West Water Services Ltd* [1993] 1 All ER 609 ;*Broome v Cassell & Co Ltd* [1971] 2 QB 354, *Laksmana Realty Sdn Bhd v Goh Eng Hwa and another appeal* [2006] 1 MLJ 675).

[133] With the above precedent in mind, it would be exceedingly obvious from this court's lengthy deliberations above that the fraudulent personas involved in the present case had indeed acted in manners in which were exceptionally detestable, repugnant, brazen, malicious, and in complete and

contumelious disregard to Firwas's interest. The fraudulent trio together with the fraudulent firm had full knowledge that Firwas firstly stood to lose at the very least RM20m had their scheme escaped the detection of the law. They deperately tried tooth and nails to lie to this court that Firwas had agreed to a RM40m purchase price although documentary evidence had consistently shown that the negotiated price had always been RM60m. Firwas also stood to lose even more millions of ringgit by being deprived of the use and opportunity to earn interest on the purchase price that would have been already settled by Eastern Titan if not for the fraudsters' hindrance. Despite having knowledge of the monumental loss that Firwas stood to lose, the fraudulent trio and the fraudulent firm had not even for a moment hesitated to actuate their fraudulent scheme.

[134] The manner in which the fraud, conspiracy, and breach of fiduciary duties were perpetrated certainly reflected an abhorrent absence of morality, basic conscience, and total lack of consideration to the victim of their tortious wrongs (being Firwas). Despite the clear and unambiguous instruction to abort and cease the negotiations, the fraudsters go well out of their way to perpetrate forgeries, perjury, and unauthorised approval of sham contracts, all in their collective and individual scheme to force Firwas to commit the sham SPA. The deflective and dishonest demeanour of the fraudsters during their testimony before this court indubitably further adds to their brazen and unapologetic attitude when they were called out for their numerous wrongs.

[135] Considering the nature and character of the fraud, conspiracy, and breach of fiduciary duty, the monumental injury caused against Firwas, and the quantum of the judgment sum awarded above, this court finds that exemplary damages would be appropriate to be awarded. This court hereby orders exemplary damages of RM100,000 each to be paid by Thevan, Siva, and Shoba (as partner of the fraudulent firm) to Firwas (totalling up to RM300,000 in aggravated and exemplary damages) (see *Sambaga Valli a/p KR Ponnusamy v Datuk Bandar Kuala Lumpur & Ors and another appeal* [2018] 1 MLJ 784; *Lembaga Kemajuan Tanah Persekutuan (FELDA) & Anor v Awang Soh bin Mamat & Ors* [2009] 4 MLJ 610; [2010] 1 AMR 285; [2009] 5 CLJ 1).

J. COSTS ON INDEMNITY BASIS ACROSS THE MAIN SUIT, THEVAN'S SHAM COUNTERCLAIM, AND FIRWAS'S COUNTERCLAIM

[136] Considering the confounding manner that Siva's and Thevan's claims were presented before this court, this court also finds that it would only be just and appropriate that this court orders cost on an indemnity basis for the benefit of Firwas. It was obvious during the course of trial that Siva's, Thevan's, and the fraudulent firm's witnesses were constantly shifting and evolving their stances

as and when they were unable to squirrel away from the solemn truth that was clearly reflected in their own documentary evidence. They relentlessly and unapologetically tried to breathe truth to obvious lies and delusions which were clearly contradicted by the barrage of their own documentary evidence furnished into court. They callously and deplorably held onto their irreconcilable false narratives right to the bitter end. They tried to lie at the face of their own contemporaneous evidence that clearly does not support their falsities. The entire litigation to enforce the sham SPA was clearly a malicious attempt to obscure the truth and illegally enforce a sham SPA which was fraudulently prepared by an unqualified lawyer who had misrepresented her forged qualifications.

[137] This court finds guidance in the English decision in *Fiona Trust & Holding Corporation and 75 ors v Yuri Privalov and 28 ors* [2011] EWHC 664 (Comm) had held the following:

(1) The court should have regard to all the circumstances of the case and the discretion to award indemnity costs is extremely wide.

(2) The critical requirement before an indemnity order can be made in the successful defendant's favour is that there must be some conduct or some circumstance which takes the case out of the norm.

(3) Insofar as the conduct of the unsuccessful claimant is relied on as a ground for ordering indemnity costs, the test is not conduct attracting moral condemnation, which is an a fortiori ground, but rather unreasonableness.

(4) The court can and should have regard to the conduct of an unsuccessful claimant during the proceedings, both before and during the trial, as well as whether it was reasonable for the claimant to raise and pursue particular allegations and the manner in which the claimant pursued its case and its allegations.

(5) Where a claim is speculative, weak, opportunistic or thin, a claimant who chooses to pursue it is taking a high risk and can expect to pay indemnity costs if it fails.

(6) A fortiori, where the claim includes allegation of dishonesty, let alone allegations of conduct meriting an award to the claimant of exemplary damages, and those allegations are pursued aggressively inter alia by hostile cross-examination.

(7) Where the unsuccessful allegations are the subject of extensive publicity, especially where it has been courted by the unsuccessful claimant, that is a further ground.

(8) *The following circumstances take a case out of the norm and justify an order for indemnity costs*, particularly when taken in combination with the fact that a defendant has discontinued only at a very late stage in proceedings:

(a) where the claimant advances and aggressively pursues serious and

wide-ranging allegations of dishonesty or impropriety over an extended period of time;

(b) where the claimant advances and aggressively pursues such allegations, *despite the lack of any foundation in the documentary evidence for those allegations, and maintains the allegations, without apology, to the bitter end*;

(c) where the claimant actively seeks to court publicity for its serious allegations both before and during the trial in the international, and national and local media;

(d) where the claimant, by its conduct, turns a case into an unprecedented factual inquiry by the pursuit of an unjustified case;

(e) where the claimant pursues a claim which is, to put it most charitably, thin and, in some respects, far-fetched;

(f) *where the claimant pursues a claim which is irreconcilable with the contemporaneous documents*;

(g) where a claimant commences and pursues large-scale and expensive litigation in circumstances calculated to exert commercial pressure on a defendant, and during the course of the trial of the action, *the claimant resorts to advancing a constantly changing case in order to justify the allegations which it has made, only then to suffer a resounding defeat.*

[138] Closer to home, this court refers to the Federal Court decision in *Takako Sakao (f) v Ng Pek Yuen (f) & Anor (No 2)* [2010] 2 MLJ 181:

> [8] Some of the *guidelines for an award of indemnity costs* were discussed by Millett J (later Lord Millett) in *Macmillan Inc v Bishopsgate Investment Trust plc and others (No 3)* [1995] 3 All ER 747:
>
> > The power to order taxation on an indemnity basis is not confined to cases which have been brought with an ulterior motive or for an improper purpose. *Litigants who conduct their cases in bad faith, or as a personal vendetta, or in an improper or oppressive manner, or who cause costs to be incurred irrationally or out of all proportion as to what is at stake, may also expect to be ordered to pay costs on an indemnity basis if they lose*, and have part of their costs disallowed if they win. Nor are these necessarily the only situations where the jurisdiction may be exercised; the discretion is not to be fettered or circumscribed beyond the requirement that taxation on an indemnity basis must be 'appropriate'.
>
> [9] What appears clear is that the *discretion to award costs on an indemnity basis is unfettered*. All that is required is that it must be an appropriate case warranting an award on that basis. There is no doubt that in this case, t*he second respondent conducted its case in bad faith*. Its directing mind and will — indeed its alter ego — was the first respondent's common law husband. In essence he was the company. *Both he and the first respondent set themselves upon a course to unlawfully deprive the appellant of her legitimate interest in the subject property*.

[139] The above considered, this court hereby orders costs as follows:

(a) in dismissing Siva's sham main suit, this court hereby orders costs on an indemnity basis to the benefit of Firwas to be paid by Siva and Ammsa Property Sdn Bhd to Firwas;

(b) in dismissing Thevan's sham counterclaim, this court hereby orders costs on an indemnity basis to the benefit of Firwas to be paid by Thevan to Firwas and Jasim; and

(c) in allowing Firwas's counterclaim, this court hereby orders costs on an indemnity basis to the benefit of Firwas, to be jointly and severally paid by Siva, Ammsa Property Sdn Bhd, Thevan, and Shoba (as partner of Usha's fraudulent firm — Chambers of Rahimi Ibrahim & Co formerly known as Messrs Faidzol Rahimi & Partners).

K. THIS COURT'S ORDERS AND DECLARATIONS ACROSS SIVA'S SHAM MAIN CLAIM, THEVAN'S SHAM COUNTERCLAIM AND FIRWAS'S COUNTERCLAIM

[140] For ease of reference, this court recapitulates this court's core findings, orders and declarations in the following manners below.

[141] As for Siva's sham main claim and Thevan's sham counterclaim, as this court has already decided above, this court hereby dismisses Siva's sham main claim and Thevan's sham counterclaim with costs on an indemnity basis as per the order for costs mentioned above in Part J of this judgment.

[142] As for Firwas's counterclaim, this court hereby allows Firwas's counterclaim and accordingly declares and orders the following:

(a) this court declares that there has never been any agreement entered into by Firwas or Siva to sell the subject land to Siva;

(b) this court declares that the sham SPA that Usha had prepared and wrongfully accepted by Usha and Siva to be illegal, fraudulent, void *ab initio* and was clearly unenforceable;

(c) this court declares that Firwas was well within its indefeasible rights to sell the subject land to Eastern Titan;

(d) this court finds that Thevan and Usha (as partner of Usha's fraudulent firm) had indeed breached their fiduciary duties owed to Firwas;

(e) this court finds that Thevan, Siva, and Shoba (as partner of Usha's fraudulent firm) had indeed perpetrated their own respective fraud and colluded in a collective tripartite conspiracy to defraud Firwas;

(f) considering that Usha was also central to the tripartite conspiracy to defraud but was not made a party within these proceedings, this court can only leave it to the ingenuity and discretion of Firwas to pursue an action against Usha in light of this court's findings;

(g) this court orders that Siva's caveat be removed forthwith within 14 days of this court's order;

(h) this court orders that Siva is liable to pay general damages (judgment sum) for wrongful entry of his caveat assessed at the rate of 8%pa x RM52.2m for the entire period from the accrual date (22 September 2020) until one month after the full removal of Siva's wrongful caveat (as this court had earlier mentioned above);

(i) this court also orders that Siva is liable to pay exemplary and aggravated damages of RM100,000 to Firwas;

(j) this court also orders that both Thevan and Shoba (as partner of Usha's fraudulent firm) to be jointly and severally liable to the general damages (judgment sum) in sub-para (h) above that Siva is liable to pay to Firwas;

(k) this court also orders that both Thevan and Shoba are respectively liable to pay RM100,000 each in exemplary and aggravated damages to Firwas;

(l) in allowing Firwas's counterclaim, this court further orders costs on an indemnity basis to the benefit of Firwas, to be jointly and severally paid by Siva, Ammsa Property Sdn Bhd, Thevan, and Shoba (as partner of Usha's fraudulent firm — Chambers of Rahimi Ibrahim & Co formerly known as Messrs Faidzol Rahimi & Partners); and

(m) this court also orders interest of 4% on the judgment sum in sub-paras (h) and (j) and the exemplary and aggravated damages in sub-para (i) and (k) awarded from the date of this court order until full settlement of all the sums awarded.

Order accordingly.

Reported by Ashok Kumar